

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

WILLIAM KILLEN,

Plaintiff,

v.

Case assigned to Sanchez-Gagne, Maria
Cause No.D-101-CV-2021-00295

CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC; D. DEMING, MD, MURRAY YOUNG, M.D., MHM HEALTH PROFESSIONALS, LLC; STATE OF NEW MEXICO, NEW MEXICO CORRECTIONS DEPARTMENT; DAVID JABLONSKI; ANTHONY ROMERO; DAVID SELVAGE; ORION STRADFORD; STEVE MADRID; CORECIVIC OF TENNESSEE, LLC, BETTY JUDD, WARDEN OF NORTHWEST NEW MEXICO CORRECTIONAL FACILITY; and JOHN DOES 1-10, (employees, staff, agents of CENTURION Correctional Healthcare of New Mexico, LLC, MHM Health Professionals, LLC, State of New Mexico, New Mexico Correctional Department, Northwest New Mexico Correctional Center, Wexford Health Sources and CoreCivic of Tennessee, LLC, respectively),

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS

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

I. PARTIES

A. PLAINTIFF

1. William Killen ("PLAINTIFF"), was at all times relevant to this complaint, a New Mexico Corrections Department ("NMCD") inmate at Northwest New Mexico Correctional Facility in Grants, Cibola County, New Mexico.

2. PLAINTIFF, at the time of the original incident as set forth below, was an inmate at Northwest New Mexico Correctional Facility (NWNMCF), a NMCD facility.

3. PLAINTIFF is no longer incarcerated at the time of the filing of this Complaint and is currently residing in Farmington, New Mexico.

B. NEW MEXICO CORRECTIONS DEPARTMENT (NMCD)

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

5. 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. CCH contracted with MHM Health Professionals, LLC (“MHM”) to provide medical staff to NWNMCF.

10. 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.

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

12. 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.

13. As the Secretary of Corrections during the times relevant to this Complaint, 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.

14. At all material times, Mr. Jablonski had a duty to "manage all programs and activities which provide for adequate care, custody and supervision of convicted felons by the courts to the Department's jurisdiction."

15. 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.

16. After Mr. Jablonski left the department, Mr. Romero had a duty to "manage all programs and activities which provide for adequate care, custody and supervision of convicted felons by the courts to the Department's jurisdiction."

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

- John Gay – Director of Adult Prisons Division
- Gary Maciel – Deputy Director of Adult Prisons Division
- Anthony Romero – Deputy Director of Adult Prisons Division

18. 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.

19. "An overarching goal of the NMCD Plan of Action is for NMCD to operate like an integrated health care organization, especially in the area of medical records and management of patient-inmate care."

20. In furtherance of NMCD's plan of action, NMCD employed David Selvage as the Health Services Administrator (HAS) for NMCD

21. David Selvage is, and was at times relevant to this Complaint, serving as the HSA for NMCD.

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

23. At all times material to Plaintiff's Complaint, Mr. Selvage was responsible for "monitoring standards of care" relevant to patient-inmates.

24. At all times material to Plaintiff's Complaint, Mr. Selvage was responsible for monitoring the care provided by CCH and MHM.

25. At all times material to Plaintiff's Complaint, Mr. Selvage "oversaw all financial operation aspects of the resultant medical services provider contract and audited the performance" of MHM and CCH.

26. Orion Stradford is, and was at times relevant to this Complaint, serving as the NMCD Bureau Chief of Internal Audits and Standards Compliance.

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

28. At all times material to Plaintiff's Complaint, Mr. Stradford was required to "document [CCH and MHM's] compliance with the Contract and to evaluate [their] overall performance."

29. 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.

30. Individuals in charge of NMCD's Grievance Process, including Mr. Madrid, serve as the "gatekeeper" between inmates and their access to adequate healthcare.

31. 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.

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

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

34. NMCD DEFENDANTS have a duty to implement infection control protocols, including:

- i. Monitoring outbreaks of infections, including spinal epidural abscesses and osteomyelitis.

- ii. Investigating such outbreaks and determining the root causes or conditions giving rise to such outbreaks.
- iii. Preventing inmates from engaging in self-destructive behavior giving rise to such outbreaks.
- iv. Preventing introduction of contraband into NMCD facilities, including NWNMCF.
- v. Curtailing the illegal use of suboxone and homemade syringes among the inmate population.

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

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

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

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

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

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

41. 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

42. 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.

43. 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.

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

45. 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.

46. 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).

47. Upon information and belief, DR. D. DEMING, MD, was the authorized medical authority for the medical care of PLAINTIFF at all times relevant to this complaint.

48. Upon information and belief, MURRAY YOUNG, M.D. was the regional medical director at all times relevant to this complaint.

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

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

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

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

D. MHM HEALTH PROFESSIONALS, LLC.

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

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

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

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

57. MHM was not a party to the GSC.

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

59. 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

60. 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.

61. 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.

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

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

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

65. 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

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

67. 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.

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

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

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

71. 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.

72. 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.

73. 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.

74. 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.

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

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

77. 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.

78. Upon information and belief, health care providers at NWNMCF, including individually named DR. D. DEMING, MD, and were employed by MHM.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.

84. 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.

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

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

87. 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.”

88. 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. CCT OF TENNESSEE, LLC

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

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

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

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

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

94. In supervising inmates under the direction of NMCD, CCT has a duty to provide for the safety and security for those NMCD incarcerates.

95. CCT has a duty to implement NMCD infection control protocols, including:

- i. Monitoring outbreaks of infections, including spinal epidural abscesses and osteomyelitis.
- ii. Investigating such outbreaks and determining the root causes or conditions giving rise to such outbreaks.
- iii. Preventing inmates from engaging in self-destructive behavior giving rise to such outbreaks.
- iv. Preventing introduction of contraband into NMCD facilities, including NWNMCF.
- v. Curtailing the illegal use of suboxone and homemade syringes among the inmate population.

96. CCT carries out discrete duties at the discretion of NMCD.

97. CCT has a duty to reasonably and prudently operate the NMCD medical facility within NWNMCF.

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

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

II. JURISDICTION AND VENUE

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

101. PLAINTIFF asserts that PLAINTIFF exhausted all available administrative remedies as required by 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11.

102. 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.

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

104. 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.

105. 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.

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

107. Jurisdiction and venue are proper over CCH'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.

108. 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.

109. Jurisdiction and venue are proper over CCT's John Doe 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.

110. 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).

111. 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

112. William Killen was a 40-year-old male, incarcerated at NWNMCF with a significant history of intravenous drug use (IVDU).

113. Mr. Killen's history of IVDU presented an obvious health risk and an extreme risk of infection, including spinal epidural abscess and osteomyelitis.

114. In August 2019, Mr. Killen began complaining to CCT officers and fellow inmates of severe health issues, including abdominal pain.

115. Mr. Killen filed medical grievances and health services requests arising from his health issues.

116. Mr. Killen was having trouble breathing.

117. After undergoing a prolonged wait for medical treatment, and in excruciating and worsening pain, on August 28, 2019, Mr. Killen was seen by CCH/MHM providers.

118. CCH/MHM knew Mr. Killen had a significant history of IVDU.

119. Mr. Killen told providers he had been experiencing severe left-sided abdominal pain for 2.5 weeks.

120. Mr. Killen stated he had been feeling sick and had a fever.

121. Mr. Killen stated that he thought he had an infection.

122. CCH/MHM determined that Plaintiff had a fever of 99.5.

123. Instead of ordering any diagnostic tests to rule out intra-abdominal infection, abscess, septic emboli, or other emergent conditions, CCH/MHM sent Mr. Killen back to his pod.

124. On August 29, 2019, Mr. Killen suspected he had an infection and again requested antibiotics.

125. He could barely open his eyes and was having significant problems with his stomach.

126. On August 30, 2019, Mr. Killen returned to CCH/MHM.

127. Mr. Killen told providers he had an infection, a severe headache, severe abdominal pain, and had been constipated for three weeks.

128. Instead of ordering any diagnostic tests to rule out intra-abdominal infection, abscess, septic emboli, or a broad range of other pathologies, CCH/MHM sent Mr. Killen back to his pod.

129. On September 3, 2019, Mr. Killen requested that CCT provide him a wheelchair and take him to see CCH/MHM.

130. Mr. Killen stated he thought he had an infection, his whole body hurt, and he was in constant pain.

131. He was having trouble breathing.

132. On September 4, 2019, Dr. Dennig (CCH/MHM) evaluated Mr. Killen.

133. Mr. Killen had been having trouble breathing for three weeks and was coughing up brown phlegm.

134. Mr. Killen was in severe pain and discomfort.

135. Mr. Killen could only speak in 2 to 3-word sentences due to shortness of breath.
136. Mr. Killen was guarding his left abdomen.
137. Mr. Killen was transported to the Emergency Room at University of New Mexico Hospital (UNMH) for respiratory distress.
138. At UNMH, providers noted a four-week history of severe left lower quadrant abdominal pain, flu-like symptoms, malaise, fever and chills, and shortness of breath.
139. UNMH providers ordered CTs of Mr. Killen's abdomen and pelvis with contrast.
140. Findings from the September 4, 2019 CTs indicated: findings concerning for splenic infarct, splenic abscess, left renal vein thrombosis, left perinephric abscess, and hepatic abscess.
141. Mr. Killen was diagnosed with hepatic, splenic and renal lesions consistent with abscesses/infarcts, suspect hematogenously seeded infection/septic emboli (likely endocarditis).
142. Dr. Wachter confirmed septic emboli, endocarditis, and various abdominal abscesses.
143. Mr. Killen was started on intravenous antibiotics.
144. On September 5, 2019, Dr. Shaeffer performed CT guided drain placement for IV Drug Abuse (IVDA) and perinephric abscess under conscious sedation.
145. 30 cc of pus was removed, and a drain was placed.
146. Throughout his ensuing hospitalization, including follow-up procedures and diagnostic tests, Mr. Killen remained in extreme pain requiring significant pain management.
147. Mr. Killen was hospitalized from September 4, 2019 to September 18, 2019.
148. On September 18, 2019, Mr. Killen was discharged back to prison.

149. Mr. Killen was discharged with a PICC line so CCH/MHM providers could administer antibiotics.

150. Mr. Killen was also discharged with perinephric drain in place.

151. Subsequent to his discharge from UNMH, Plaintiff underwent a painful and lengthy recovery.

152. Plaintiff sustained permanent injuries as a result of the above-described incident.

153. CCH/MHM's failure to provide diagnostic imaging on August 28, 2019 was reckless and grossly negligent.

154. CCH/MHM's failure to provide diagnostic imaging thereafter was inexcusable.

155. CCH/MHM's complete failure to provide diagnostic imaging or treatment for Plaintiff's life-threatening infections relayed in grossly delayed diagnosis of sepsis secondary to likely bacteremia in the setting of IV drug abuse complicated by multiple septic emboli including splenic abscess, hepatic abscesses, ascending left-sided kidney infection, possible retroperitoneal abscess and Deep Vein Thrombosis (DVT) including splenic and left renal vein and possibly portal vein.

156. As a result of CCH/MHM's gross negligence, Plaintiff suffered significant pain and distress from August 4, 2019 until he received treatment at UNMH on September 5, 2019.

157. As a result of CCH/MHM's gross negligence, Plaintiff underwent a lengthy hospital stay, painful and avoidable medical procedures.

A. FACTS SPECIFIC TO NMCD DEFENDANTS

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

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

160. NMCD routinely ignores medical grievances.
161. NMCD routinely destroys medical grievances.
162. NMCD routinely fails to process medical grievances correctly.
163. When medical grievances are addressed, NMCD routinely and without medical justification, finds against inmates filing medical grievances.
164. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at NWNMCF.
165. During the term of the GSC, NMCD did not find in favor of a single NMCD inmate housed at NWNMCF.
166. NMCD does not consult with objective medical experts in the review of medical grievances.
167. The decision of whether to substantiate a medical grievance is made by non-medical NMCD personnel.
168. DEFENDANT STEVE MADRID is instrumental in the denial of medical grievances.
169. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including PLAINTIFF.
170. NMCD's medical grievance abuses outlined above are a proximate cause of injuries related thereto.
171. 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.

172. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of drug use and infection 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.

173. STEVE MADRID knew of PLAINTIFF's history of drug use and infection and with wanton, willful and deliberate indifference ignored his medical grievances.

174. Betty Judd knew of PLAINTIFF's history of drug use and infection and with wanton, willful and deliberate indifference ignored his medical grievances.

175. CCH DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of drug use and infection

176. MHM DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history drug use and infection.

177. DIETER DENNING, MD knew of PLAINTIFF's history of drug use and infection and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

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

179. NMCD understands and recognizes that failure to treat abscesses, sepsis, septic emboli, and endocarditis constitutes recklessness under New Mexico law.

180. NMCD understands and recognizes that failure to treat abscesses, sepsis, septic emboli, and endocarditis constitutes recklessness under New Mexico law.

181. NMCD had full authority to enforce the GSC.

182. NMCD had at all times relevant to this COMPLAINT the authority to compel its CCH and MHM to treat abscesses, sepsis, septic emboli, and endocarditis.

183. NMCD has obtained substantial budgets for treatment of abscesses, sepsis, septic emboli, and endocarditis.

184. NMCD pays millions of dollars to its CCH and MHM for treatment of abscesses, sepsis, septic emboli, and endocarditis.

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

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

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

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

189. 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”.

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

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

191. NMCD recklessly chose not to exercise any control over the manner in which its CCH and MHM performed their duties leading to the uncontrolled spinal osteomyelitis, diabetic peripheral neuropathy, GERD, foot infections, deformities and ulcerations and amputation.

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

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

194. NMCD recklessly chose not to exercise any control over the manner in which its CCH and MHM performed their duties leading to the uncontrolled spinal osteomyelitis.

195. NMCD interfered, obstructed and denied inmates access to the grievance process.

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

B. FACTS SPECIFIC TO CCH DEFENDANTS

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

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

199. CCH Tech Response was over 1200 pages long.

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

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

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

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

204. The GSC was 80 pages in length.

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

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

207. The GSC did not mention punitive damages.
208. The GSC did not provide for Tort Claims Act protection for CCH or its respective employees, staff, agents, staffing agencies or other vendors.
209. Tort Claims Act protection for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
210. Protection from punitive damages for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
211. The GSC was freely entered into by CCH on or about June 2016.
212. The GSC was in effect from June 2016 to November 2019.
213. CCH had the legal capacity to enter the GSC.
214. CCH was legally competent to enter the GSC.
215. There was mutual assent on the part of CCH and NMCD in the negotiation and execution of the GSC.
216. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the GSC.
217. The GSC was not vague.
218. The GSC was not oppressive to CCH.
219. The GSC was not void as a matter of public policy.
220. CCH is and was at all relevant times bound by the terms of the GSC.
221. The GSC is fully enforceable against CCH as written.
222. 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.”

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

224. 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.

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

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

227. 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.

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

229. 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.”

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

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

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

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

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

234. The GSC states:

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

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

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

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

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

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

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

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

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

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

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

244. 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.

C. FACTS SPECIFIC TO MHM DEFENDANTS

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

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

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

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

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

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

251. MHM was not a party to the GSC.

252. MHM is a third party to the GSC.

D. FACTS COMMON TO ALL DEFENDANTS

253. Upon information and belief, by August 4, 2019, PLAINTIFF had an obvious infection.

254. PLAINTIFF, who is not a medical provider, knew he had an infection and repeatedly requested treatment and antibiotics.

255. ALL DEFENDANTS knew that PLAINTIFF was in need of immediate diagnostic imaging to diagnose the following significant symptoms: fever, malaise, severe abdominal pain (with point tenderness and guarding), and difficulty breathing.

256. ALL DEFENDANTS knew that failure to diagnose PLAINTIFF's condition could result in unnecessary hospitalization, unnecessary medical procedures, and/or death.

257. ALL DEFENDANTS knew that PLAINTIFF had a history of drug use and infection, and yet, did not evaluate or treat PLAINTIFF for obvious infection.

258. ALL DEFENDANTS knew that the failure to treat PLAINTIFF'S obvious infection constitutes recklessness under New Mexico law.

259. ALL DEFENDANTS knew that the failure to treat PLAINTIFF'S obvious infection constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

260. ALL DEFENDANTS knew that the failure to treat PLAINTIFF'S obvious, life-threatening infection, constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

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

262. 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 never diagnosed intra-abdominal infection, abscesses, sepsis, septic emboli, and endocarditis.

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

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

264. IVDU-related infections are very common in NMCD facilities.

265. In NWNMCF alone, the incidence of IVDU-related infections outpaces the national average by an order of magnitude.

266. Despite their prevalence, these IVDU-related infections go untreated and undiagnosed until the inmate's condition deteriorates to the point, he is in obvious need of emergent hospital care.

267. 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.

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

269. 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 of IVDU-related infection;
- f. Failure to provide PLAINTIFF with necessary and proper pain management;
- g. Failure to protect and preserve the health of PLAINTIFF.

215. 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.

216. 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)**

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

218. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10
219. NMCD is solely responsible for the medical grievance process.
220. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.
221. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.
222. NMCD is in charge of enforcement of the terms of the GSC which creates standards and obligations for CCH's delivery of medical services.
223. 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.
224. NMCD is solely responsible for the administration and enforcement of medical care standards in NMCD facilities.
225. NMCD determined not to enforce the NCCHC standards.
226. NMCD determined not to seek NCCHC accreditation for its facilities while CCH was the medical provider.
227. NMCD determined not to enforce the ACA standards.
228. NMCD allowed ACA accreditation for its facilities to lapse under the medical care of CCH.
229. 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.

230. 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.

231. Numerous inmates that have suffered from IVDU-related infections while incarcerated in the NMCD system.

232. At NWNMCF specifically, these infections go untreated until the inmates deteriorate to the point they need to be hospitalized for prolonged periods.

233. Inmates at NWNMCF and other NMCD facilities, have died as a result of the pattern and practice of failing to diagnose and treat IVDU-related infections.

234. IVDU-related infections are a known risk within NMCD facilities.

235. IVDU-related infections are known to pose risks for permanent harm or death.

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

237. NMCD took, and has taken, no action to protect NMCD inmates from infection.

238. NMCD continues to allow inmates who are being “rehabilitated” for past drug use to have access to drugs and homemade syringes.

239. NMCD has allowed IVDU and IVDU-related infections to run rampant at NMCD facilities.

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

241. 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.

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

243. Instead, NMCD has allowed the risk of infection, endocarditis, abscessed and sepsis to run rampant among inmates in its facilities, leading to unnecessary complications, extensive hospitalizations, and even death.

244. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of spinal osteomyelitis.

245. 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 infection, or to implement proper infection control.

246. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of infection and infection control and prevention.

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

248. NMCD's negligence, and 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.

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

250. 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)**

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

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

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

254. 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.

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

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

257. 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.

258. 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.

259. CCH failed to abide by critical terms of the GSC, including provisions regarding chronic care and infection control.

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

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

262. 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.

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

264. CCH failed to abide by medical standard of care established under New Mexico law, which contributed to PLAINTIFF's injuries.

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

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

267. As evidenced by the numerous inmates positive for IVDU-related infections like endocarditis, sepsis, osteomyelitis and abscesses while incarcerated in the NMCD system, but only a small fraction receives medical care and face harm from untreated infections.

268. With this elevated risk of harm, NMCD and CCH/MHM has an increased duty of care to these vulnerable inmates.

269. NMCD and CCH/MHM have not addressed this increased risk of harm, even though NMCD policies and procedures and CCH policies and procedures explicitly provide for the care of inmates in need of medical treatment.

270. As such, NMCD, CCH and MHM have negligently operated NWNMCF, a public facility in which it incarcerated New Mexicans.

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

272. 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: NEGLIGENCE
(CCT Defendants)**

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

274. CCT DEFENDANTS were under to contract to manage the NWNMCF at all times relevant to this complaint.

275. CCT DEFENDANTS had a duty to manage NWNMCF in a manner that provided for health and safety of NWNMCF inmates.

276. CCT DEFENDANTS were responsible for taking and acting upon inmate medical grievances at NWNMCF.

277. CCT DEFENDANTS failed to uphold their responsibilities for inmate medical grievances.

278. CCT DEFENDANTS routinely lost or destroyed inmate grievances without taking any action on said grievances.

279. CCT DEFENDANTS routinely retaliated against inmates including PLAINTIFF for filing medical grievances.

280. CCT DEFENDANTS actions were deliberately indifferent to the health and safety of NWNMCF inmates.

281. CCT 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.

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

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

284. Numerous inmates that have suffered from IVDU-related infections while incarcerated at NWNMCF system.

285. At NWNMCF, these infections go untreated until the inmates deteriorate to the point they need to be hospitalized for prolonged periods.

286. Inmates at NWNMCF have died as a result of the pattern and practice of failing to diagnose and treat IVDU-related infections.

287. IVDU-related infections are a known risk within NWNMCF.

288. IVDU-related infections are known to pose risks for permanent harm or death.

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

290. CCT took, and has taken, no action to protect CCT inmates from infection.

291. CCT continues to allow inmates who are being "rehabilitated" for past drug use to have access to drugs and homemade syringes.

292. CCT has allowed IVDU and IVDU-related infections to run rampant at NWNMCF.

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

294. CCT has created a risk to all inmates at NWNMCF

295. 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 V: NEGLIGENT OPERATION OF A MEDICAL FACILITY
(CCH DEFENDANTS)**

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

297. 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.

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

299. CCH DEFENDANTS were negligent in failing to properly assess, treat and manage PLAINTIFF's infection, abscesses and related health conditions.

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

301. 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.

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

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

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

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

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

307. 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 spinal osteomyelitis and related health conditions.

308. 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.

309. CCH has never sought, obtained or maintained either ACA or NCCHC accreditation for the medical facilities and services at NWNMCF as required by the GSC.

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

311. 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.

312. 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 VI: NEGLIGENT OPERATION OF A MEDICAL FACILITY
(NMCD DEFENDANTS)**

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

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

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

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

317. NMCD operates the medical facilities at NWNMCF through David Jablonski, David Selvage, Anthony Romero and Orion Stradford.

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

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

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

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

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

323. 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.

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

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

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

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

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

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

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

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

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

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

334. 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.

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

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

337. 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.

338. 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.

339. As evidenced by the numerous inmates positive for infection, abscesses, endocarditis, and other IVDU-related infections while incarcerated in the NMCD system, only a small fraction receives medical care and face harm.

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

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

342. 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.

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

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

345. 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 VII: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(CCH and MHM)**

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

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

348. 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 spinal osteomyelitis and related health conditions

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

350. 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.

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

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

353. 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.

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

355. 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.

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

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

**COUNT IX: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(CCH, MHM and CCT)**

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

359. CCH, MHM and CCT DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for his spinal osteomyelitis.

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

361. CCH, MHM and CCT DEFENDANTS retaliated against PLAINTIFF for taking away his admission in the Echo Project for treatment of his spinal osteomyelitis knowing his spinal osteomyelitis was worsening his health conditions because of a disciplinary action.

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

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

364. 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 X: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(CCT)**

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

366. CCT retaliated against PLAINTIFF for taking away his admission in the Echo Project for treatment of his spinal osteomyelitis knowing his spinal osteomyelitis was worsening his health conditions because of a disciplinary action.

367. CCT retaliated against PLAINTIFF in conspiracy with CCH DEFENDANTS.

368. The conduct of CCH DEFENDANTS was extreme, outrageous and intentional.

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

370. 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 XI: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE
(CCH, MHM and CCT)**

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

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

373. 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 CCT DEFENDANTS.

374. 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.

375. PLAINTIFF is entitled to damages, including punitive damages, against CCH, MHM AND CCT DEFENDANTS.

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

377. PLAINTIFF is entitled to punitive damages against CCH, MHM AND CCT DEFENDANTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

388. 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.

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

390. 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.

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

**COUNT XVII: PUNITIVE DAMAGES
(CCH, MHM and CCT)**

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

393. 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 CCT, 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.

GUEBERT GENTILE & PIAZZA P.C.

By /s/ David S. Ketai

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