

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

DELORES RASCON, as Personal
Representative of the **ESTATE OF**
EFRAIN MARTINEZ, deceased,

Plaintiff,

v.

No. D-101-CV-2020-00488

**CENTURION CORRECTIONAL
HEALTHCARE OF NEW MEXICO,
LLC; KATHERINE ALLEN, FNP;
JAMES GONZALES, M.D.; DANIELLE
PALUMBO LPN; MHM HEALTH
PROFESSIONALS, INC.; STATE OF
NEW MEXICO, NEW MEXICO
CORRECTIONS DEPARTMENT;
DAVID JABLONSKI; ANTHONY
ROMERO; DAVID SELVAGE; ORION
STRADFORD; STEVE MADRID;
PNM WARDEN JOHN GAY;
LOVELACE MEDICAL CENTER, INC.
and JOHN DOES 1-10, (employees, staff,
agents of New Mexico Corrections
Department, Centurion Correctional
Healthcare of New Mexico, LLC, MHM
Health Professionals, Inc. and Lovelace
Medical Center, Inc. respectively),**

Defendants.

**FIRST AMENDED COMPLAINT FOR
MEDICAL MALPRACTICE AND RELATED CLAIMS**

COMES NOW the Plaintiff, Delores Rascon, as Personal Representative of the Estate of Efrain Martinez, deceased, by and through her attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and GUEBERT GENTILE & PIAZZA P.C. (Terry R. Guebert, Robert Gentile and David S. Ketai), and for her cause of action states as follows:

PARTIES

1. Plaintiff, Delores Rascon, was appointed Personal Representative of the Estate of Efrain Martinez, deceased, (hereinafter “EFRAIN MARTINEZ”) on April 18, 2019, (**EXHIBIT “A”**) and is a resident of Lea County, New Mexico (hereinafter “PLAINTIFF”).

2. PLAINTIFF brings this action as the Personal Representative of the Estate of EFRAIN MARTINEZ, deceased.

3. CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC (hereinafter “CENTURION”) 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.

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

5. At all material times, CENTURION 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.

6. CENTURION 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 in November 2019.

7. CENTURION 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, Inc.

8. A Dr. Wittman (full name illegible in medical records), JOHN DOE doctors and medical providers working for Centurion and MHM were the authorized medical authority in the medical care of EFRAIN MARTINEZ at times critical to this complaint.

9. Upon information and belief, MHM Health Professionals, Inc. (hereinafter “MHMHP”), is a Delaware for profit corporation.

10. Upon information and belief, MHMHP provides medical personnel to CENTURION, including those medical personnel providing medical services at “facility.”

11. Upon information and belief, MHMHP employees provided on-site healthcare services to NMCD inmates, pursuant to MHMHP’s contract with CENTURION.

12. At all material times, MHMHP 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.

13. MHMHP and its John Doe employees, staff and agents will be referred to herein collectively as “MHM.”

14. Defendants New Mexico Corrections Department and the Northwest New Mexico Correctional Facility, (hereinafter “DEFENDANTS” and/or “STATE”) are entities of the State of New Mexico.

15. Defendant State of New Mexico has authorized New Mexico Corrections Department (hereinafter “NMCD”) to operate PNM, in Santa Fe, New Mexico.

16. NMCD retains ultimate authority over PNM, and PNM is operated in accordance with NMCD rules, policies and procedures.

17. NMCD is responsible for contracting of medical services for all NMCD facilities

including PNM.

18. At all material times, NMCD 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.

19. David Jablonski was serving as the Secretary of Corrections at all times relevant to this Complaint, although he is not currently serving as the Secretary of Corrections.

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

21. Anthony Romero was serving as Deputy Secretary of Corrections at all times relevant to the Complaint and is currently serving as Acting Secretary of Corrections.

22. As the Deputy Secretary of Corrections, Mr. Romero oversees prison operations, including NMCD's duty to provide a safe environment at PNM, and ensure that inmates have access to adequate medical care.

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

24. As HSA for NMCD, Mr. Selvage maintains direct clinical oversight of independent contractors, ensuring that contractors are making prudent clinical decisions, and providing adequate care to those inmates NMCD incarcerates, including those at PNM.

25. Mr. Selvage uses his experience as a Physician's Assistant to inform his clinical oversight.

26. Orion Stradford was at all times relevant to this Complaint, serving as the NMCD

Bureau Chief.

27. As NMCD Bureau Chief, Mr. Stratford was at all relevant times responsible for monitoring the work of independent contractors, including MHMHP and CENTURION, and acts as NMCD's supervisor of these independent contractors.

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

29. As the individual in charge of NMCD's Grievance Process, Steve Madrid serves as the "gatekeeper" between inmates and their access to adequate healthcare. If Mr. Madrid does not responsibly manage the grievance process, inmates have no way of accessing competent and necessary medical care from Centurion or NMCD.

30. Upon information and belief, John Gay was the acting warden of PNM at all times material to this complaint.

31. 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."

32. NMCD Defendants have a duty to provide for the safety and security for those it incarcerates.

33. NMCD governs, operates and maintains PNM, while independent contractors carry out discrete duties at the discretion of NMCD.

34. NMCD Defendants have a duty to reasonably and prudently operate the medical facility within PNM.

35. NMCD maintains direct authority over the PNM medical facility via Mr. Selvage,

Mr. Jablonski, Mr. Romeo, and Mr. Stratford.

36. Any of these NMCD individuals can intercede on behalf of NMCD if independent contractors are not appropriately caring for NMCD inmates.

JURISDICTION AND VENUE

37. All acts complained of herein occurred in Santa Fe, Santa Fe County, State of New Mexico at the Penitentiary of New Mexico (PNM).

38. CENTURION's registered agent is in Espanola, New Mexico.

39. The contract for prison medical services between CENTURION and the State of New Mexico was, upon information and belief, executed in Santa Fe, New Mexico.

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

41. 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).

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

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

FACTS COMMON TO ALL COUNTS

44. On 09/11/2018, EFRAIN MARTINEZ put in a health services request form (sick call) stating: "Have real bad heart burn, was given Tums and did not help any, would like something stronger. Thank you."

45. On 09/12/2018, EFRAIN MARTINEZ was seen by CENTURION medical providers with "Complaints of real bad heart burn/tums not helping. Daily real bad/waking me in the middle night."

46. On 09/20/2018, EFRAIN MARTINEZ put in a sick call stating: "Have bad heart burn. I have been given Tums and Mylanta and neither works. Heart burn is painful may have ulcer. Requesting something stronger. Thank you."

47. 09/23/2018, EFRAIN MARTINEZ put in a sick call stating: "I have put in a few sick calls about my heart burn or ulcer. Whatever it is horrible, hurts and doesn't let me sleep. It's been a few days and it's getting worse."

48. The medical records indicate that EFRAIN MARTINEZ was to be seen on 09/25/2018. No medical records were provided for 09/25/2018.

49. On 09/26/2018, the medical records note Inmate complaints of persistent worsening heartburn making it difficult to sleep. Inmate states having previously being treated with Tums and Mylanta. Inmate states having a history of GERD; thinks he has given ulcer.

50. On 09/26/2018, the issue was discussed with Dr. Wittman and EFRAIN MARTINEZ was to be seen by Dr. Wittman.

51. Counsel for PLAINTIFF lawfully requested and was provided the medical records for EFRAIN MARTINEZ by NMCD.

52. There are no medical records that were provided pursuant to lawful request for the period 09/27/2018 to 09/30/2018.

53. On 10/01/2018, it was falsely reported that EFRAIN MARTINEZ refused treatment.

54. On 10/08/2018, EFRAIN MARTINEZ had a Chronic disease clinic follow-up-Endocrine.

55. There are no medical records that were provided pursuant to lawful request for the period 10/09/2018 to 11/24/2018.

56. On 11/25/2018, EFRAIN MARTINEZ put in a health services request form (sick call) reporting "I am very weak. Have not been able to hold no liquid or food down for a few days. I am very ill with my body aching. Need medical attention as soon as possible."

57. The Interdisciplinary progress notes by E. Forsberg, RN from 11/26/2018 indicate Inmate complained of vomiting, yellow liquid (large amount) for 2 days, pain to lower back and body. States hasn't eaten since Thanksgiving Day, lost 5 pounds in 2 days. Inmate weak, very pale/yellow, denies any abdominal pain. Dr. French called.

58. The progress notes from 11/27/2018 again by RN Forsberg state: "Patient in medical hold, still unable to eat or keep fluids down. Complaints of massive headache. Still walks very slowly. Today, right eye blood shot, complaints of blurry vision in right eye. Lab results not in yet. Spoke with Bio Reference 0800 hours."

DATE	TIME	PROGRESS NOTES
11/27/18	0845	
Temp (F)	101.2	Hat just taken off = 2min.
HT (inches)		
WT (lbs.)		
BMI		Pt in med. hold still unable to eat
Pulse	125	Dr. keep fluids down.
Respirations	12	no massive headache.
O2	92%	Still walks very slowly.
BP	118/75	today R eye blood shot eye blurry vision
Peak Flow:		R eye lab results not in yet.
		Spoke 7 BioReference 0850.

59. The nursing notes from 11/27/2018 state: Patient seen in medical clinic for complaints of high fever, back pain and headache. Patient now also reporting headache as well. Patient now also inform ___ that his symptoms began 11/22/2018 after “_____ up” [blanks illegible in medical records] after harm from an old needle he had in his cell. He reported still feeling nauseating, but now complaint of back and neck pain. Patient denies any malaise or hematuria. Feels weak.

60. Examination: General: Alert and oriented x 3, speech slurred, somnolent. Eyes: Positive conjunctiva, petechia, inflamed right eye. Neck: Full range of motion, but complaints of soreness. Lungs: Clear to auscultation bilaterally, shallow. Cardiovascular: Tachycardic, probable diastolic murmur

61. On 11/27/2018, Efrain Martinez was transported to the ER at Christus St. Vincent Hospital (CSV) where he was immediately admitted.

62. EFRAIN MARTINEZ was admitted to CSV on from 11/27/2018 to 11/29/2018 where he was diagnosed with:

- a. Severe sepsis, possible meningitis vs endocarditis in the differential.
- b. Acute metabolic encephalopathy.
- c. IVDU.
- d. Severe thrombocytopenia.
- e. Elevated troponin, possible NonST-Elevation Myocardial Infarction (NSTEMI), likely type 2.

- f. Positive Hepatitis C.
- g. Aortic valve infective endocarditis.

63. On 11/29/2018, EFRAIN MARTINEZ was transferred to Lovelace Medical Center for heightened level of care where he remained until his death on 01/11/2019.

64. On 12/15/18 family was informed that he was in an induced coma at Lovelace--- he had been in there since 11.26.18, no one notified the family

65. On 01/11/2018, Lovelace Medical Center, Ind. medical records note: Discussed with Prison warden and the health service manager of the state of New Mexico – Decision was made to perform comfort measures and withdrawal of care.

66. Efrain Martinez expired on 01/11/2018.

67. PNM Warden, John Gay unlawfully did direct Lovelace Medical Center to withdraw medical care for Efrain Martinez.

68. Lovelace Medical Center unlawfully withdrew medical care for Efrain Martinez over the protests of Efrain Martinez's family members.

**COUNT I
MEDICAL MALPRACTICE AND NEGLIGENCE
(CENTURION DEFENDANTS)**

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

70. In undertaking the diagnosis, care and treatment of EFRAIN MARTINEZ, CENTURION, 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.

71. CENTURION, its employees, staff and agents breached their duties and were negligent in the management of EFRAIN MARTINEZ's health and well-being.

72. CENTURION's negligence, errors, acts and omissions include, but are not limited to:

- a. Failure to establish, maintain and enforce infection control guidelines and standards;
- b. Failure to evaluate, treat and manage EFRAIN MARTINEZ's medical condition.
- c. Failure to take the reasonable steps to acquire proper treatment of EFRAIN MARTINEZ;
- d. Failure to refer EFRAIN MARTINEZ to appropriate specialists or ER in a timely manner;
- e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of emergent heart infection;
- f. Failure to provide EFRAIN MARTINEZ with necessary and proper pain management; and
- g. Failure to protect and preserve the health of EFRAIN MARTINEZ.

73. As a direct and proximate result of the negligent acts and omissions CENTURION, its employees, staff and agents, EFRAIN MARTINEZ suffered a rapid and significant deterioration in his health ending in death, along with consequent physical, emotional, and psychological pain and suffering not presently determinable, but to be proven at the time of trial.

74. CENTURION, its employees, staff and agent's failures to assess, treat and manage EFRAIN MARTINEZ's emergent heart infection was reckless and wanton with utter disregard for the safety and welfare of EFRAIN MARTINEZ, for which PLAINTIFF is entitled to punitive damages.

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

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

76. The medical grievance process is intended as a safeguard for inmate health in the

event of inadequate health care.

77. NMCD routinely denies inmate medical grievances not having found in favor of an inmate during the entire term of the GSC with Centurion.

78. NMCD's routine denial of inmate medical grievances created fertile ground for gross and extreme medical neglect at the hand of Centurion and MHM.

79. NMCD's routine denial of medical grievances contributed to the death of EFRAIN MARTINEZ.

80. NMCD is in charge of enforcement of the terms of the medical services contract which creates standards and obligations for CENTURION's delivery of medical services.

81. 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 death of EFRAIN MARTINEZ.

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

83. NMCD determined not to enforce the NCCHC standards and ceased seeking NCCHC accreditation during the term of the GSC with Centurion.

84. NMCD determined not to enforce the ACA standards.

85. NMCD allowed ACA accreditation for its facilities to lapse under the medical care of CENTURION.

86. NMCD's indifference to national standards for the constitutionally acceptable medical care of inmates and NMCD's allowance of CENTURION to provide services fall below constitutional standards led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to EFRAIN MARTINEZ.

87. 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.

88. As evidenced by seven (7) concurrent osteomyelitis cases, one of which occurred at PNM,

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

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

91. 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.

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

93. NMCD unlawfully directed Lovelace Medical Center to withdraw medical care for Efrain Martinez.

94. NMCD was intimately involved in the medical care and the withdrawal of medical care from Efrain Martinez.

95. As a result of the foregoing, EFRAIN MARTINEZ 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)**

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

97. NMCD DEFENDANTS negligently failed to oversee CENTURION in the provision of medical care to NMCD inmates, which contributed to EFRAIN MARTINEZ's injuries.

98. NMCD DEFENDANTS failed to take corrective action against CENTURION in clear face of recurrent and consistent negligent and reckless medical care to NMCD inmates, which contributed to EFRAIN MARTINEZ's injuries.

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

100. CENTURION's medical staff at PNM lacked sufficient expertise to assess, treat and manage EFRAIN MARTINEZ's health conditions.

101. CENTURION has a duty under the GSC, ACA and NCCHC to properly refer EFRAIN MARTINEZ to be seen by a physician who could effectively treat him.

102. NMCD DEFENDANTS negligently failed to enforce critical terms of the GSC, including but not limited to, failure to compel PNM and/or CENTURION to obtain accreditation by the ACA and NCCHC which contributed to EFRAIN MARTINEZ's death.

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

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

105. 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 EFRAIN MARTINEZ's injuries.

106. NMCD DEFENDANTS negligently failed to hold CENTURION to standards and guidelines of the ACA or NCCHC.

107. NMCD DEFENDANTS negligently failed to hold CENTURION to the medical standard of care established under New Mexico law, which contributed to EFRAIN MARTINEZ's injuries.

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

109. NMCD has a duty to operate PNM in a safe and reasonably prudent manner.

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

111. As evidenced by seven (7) concurrent osteomyelitis cases, one of which occurred at PNM, prisoners incarcerated at PNM face an elevated risk of harm from infection.

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

113. 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.

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

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

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

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

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

118. CENTURION 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.

119. CENTURION employees, staff and agents were unqualified to care for EFRAIN MARTINEZ, and yet refused to refer EFRAIN MARTINEZ to specialists.

120. CENTURION DEFENDANTS were negligent in failing to properly assess, treat and manage EFRAIN MARTINEZ's emergent heart infection.

121. CENTURION DEFENDANTS were negligent in failing to properly refer EFRAIN MARTINEZ to be seen by a physician who could effectively treat EFRAIN MARTINEZ.

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

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

124. Such conduct amounts to negligence in the treatment of EFRAIN MARTINEZ.

125. CENTURION had a duty to properly screen, supervise, educate, and train its employees regarding EFRAIN MARTINEZ and inmates with similar health conditions within the facility.

126. CENTURION had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates with emergent infections.

127. CENTURION was 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.

128. CENTURION has never sought, obtained or maintained either ACA or NCCHC accreditation for the medical facilities and services at PNM as required by the GSC.

129. CENTURION does not comply with ACA, NCCHC or New Mexico standards of medical care.

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

131. The actions of CENTURION DEFENDANTS were negligent, willful, wanton, and in gross and reckless disregard for EFRAIN MARTINEZ's health and life entitling PLAINTIFF to punitive damages thereon.

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

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

133. NMCD has authority over all NMCD correctional facilities, including PNM.

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

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

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

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

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

139. CENTURION's medical staff at PNM lacked sufficient expertise to assess, treat and manage EFRAIN MARTINEZ's health conditions.

140. CENTURION has a duty under the GSC, ACA and NCCHC to properly refer EFRAIN MARTINEZ to be seen by a physician who could effectively treat him.

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

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

143. NMCD DEFENDANTS knew that CENTURION was not properly and adequately treating EFRAIN MARTINEZ's medical condition.

144. NMCD DEFENDANTS knew that CENTURION was not referring EFRAIN MARTINEZ to outside medical healthcare providers who could effectively and prudently treat

him.

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

146. Such conduct amounts to negligence in the treatment of EFRAIN MARTINEZ.

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

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

149. CENTURION has violated numerous provisions of ACA and NCCHC.

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

151. 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.

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

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

154. NMCD DEFENDANTS failed to implement an electronic medical records system (EMR) in violation of its own duties under the GSC:

a. By the terms of the GSC, NMCD was to work with Centurion for the implementation of an electronic medical records (EMR) system

b. EMR is important for the treatment and care of patients, including inmates.

c. EMR ensures continuity of care and helps to greatly reduce medical error and oversight.

d. NMCD failed to implement an EMR thus endangering the health of inmates, including Efrain Martinez.

155. 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.

156. As evidenced by seven (7) concurrent highly dangerous osteomyelitis infection cases, including one death case, one of which occurred at PNM, prisoners incarcerated at PNM face an elevated risk of harm from infection.

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

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

159. 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.

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

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

162. As a result of the foregoing, EFRAIN MARTINEZ suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress

for which PLAINTIFF is entitled to damages.

COUNT VI
NEGLIGENT HIRING, TRAINING AND SUPERVISION
(CENTURION DEFENDANTS and MHM DEFENDANTS)

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

164. CENTURION and MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates with emergent infections.

165. Centurion had no policies and procedures of its own, despite numerous representations to the contrary, that addressed prevention, treatment and management of emergent infections.

166. On information and belief, CENTURION 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 EFRAIN MARTINEZ's emergent heart infection.

167. CENTURION 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.

168. CENTURION has not established any standards for medical care.

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

170. CENTURION and MHM' negligent hiring, training and supervision were the proximate cause of EFRAIN MARTINEZ's injuries and damages for which PLAINTIFF is entitled to damages for the wrongful death of EFRAIN MARTINEZ, including all related injuries including, but not limited to, physical injuries, pain and suffering, and severe

psychological and emotional distress.

171. CENTURION and MHM's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of EFRAIN MARTINEZ.

172. PLAINTIFF is entitled to recovery for EFRAIN MARTINEZ's injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

173. PLAINTIFF is entitled to punitive damages against CENTURION and MHM.

**COUNT VII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(CENTURION DEFENDANTS)**

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

175. CENTURION DEFENDANTS intentionally denied EFRAIN MARTINEZ proper and necessary medical care for his emergent heart infection.

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

177. The conduct of CENTURION DEFENDANTS was extreme, outrageous and intentional.

178. EFRAIN MARTINEZ suffered severe emotional distress as a result of the conduct of DEFENDANTS.

179. As a result of the foregoing, EFRAIN MARTINEZ has suffered death along with consequent pain and suffering, and severe psychological and emotional distress, for which PLAINTIFF is entitled to damages, including punitive damages.

COUNT IX
NEGLIGENCE *PER SE*
(CENTURION, MHMHP and NMCD)

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

181. NMSA § 33-2-1 states that “The corrections division [corrections department] shall adopt such rules concerning all prisoners committed to the penitentiary as shall best accomplish their confinement and rehabilitation.”

182. By the terms of the GSC, ACA and NCCHC standards were to be adopted by NMCD and CENTURION in addition to internal NMCD regulations.

183. NMCD DEFENDANTS and CENTURION DEFENDANTS knowingly and willfully chose not to abide by the ACA or NCCHC standards of care for the medical services and facilities at NMCD correctional facilities.

184. CENTURION DEFENDANTS’ multiple and persistent violations of mandatory medical care standards in the care of EFRAIN MARTINEZ were willful, deliberate and in wanton disregard for the health and safety of EFRAIN MARTINEZ for which punitive damages are appropriate.

COUNT X
CIVIL CONSPIRACY
(All Defendants)

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

186. The facts illustrated above show a conspiracy on the part of CENTURION DEFENDANTS, MHM DEFENDANTS and NMCD DEFENDANTS to deny EFRAIN MARTINEZ necessary, proper and constitutionally minimal medical care.

187. As a result of said conspiracy, EFRAIN MARTINEZ suffered death along with severe physical and emotional distress as a result of the conduct of said conspiracy.

188. PLAINTIFF is entitled to recovery for EFRAIN MARTINEZ's injuries and damages, including but not limited to, wrongful death along with consequent physical injuries, pain and suffering, and severe psychological and emotional distress.

189. PLAINITFF is entitled to damages, including punitive damages, against CENTURION, MHM AND NMCD DEFENDANTS.

190. There is no Tort Claims Act waiver for civil conspiracy for NMCD, this does not preclude conspiracy counts against Centurion and/or MHM Defendants.

191. PLAINTIFF is entitled to punitive damages against CENTURION and MHM DEFENDANTS.

COUNT XII
RESPONDEAT SUPERIOR AND AGENCY
(CENTURION DEFENDANTS and MHM DEFENDANTS)

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

193. CENTURION is responsible to EFRAIN MARTINEZ under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

194. CENTURION is responsible to EFRAIN MARTINEZ under the doctrine of agency for the conduct of its employees, staff and agents.

COUNT XIII
RESPONDEAT SUPERIOR AND AGENCY
(NMCD)

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

196. NMCD is responsible to EFRAIN MARTINEZ under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

197. NMCD is responsible to EFRAIN MARTINEZ under the doctrine of agency for the conduct of its employees, staff and agents.

COUNT XIV
RES IPSA LOQUITUR
(CENTURION DEFENDANTS and MHMHP DEFENDANTS)

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

199. The injuries and damages suffered by EFRAIN MARTINEZ were proximately caused by wanton, willful and reckless actions and inactions CENTURION DEFENDANTS and NMCD DEFENDANTS.

200. It was CENTURION's responsibility to manage and control their medical staff and the care and treatment of EFRAIN MARTINEZ.

201. The events causing the injuries and damages to EFRAIN MARTINEZ were of a kind which would not ordinarily occur in the absence of negligence on the part of CENTURION DEFENDANTS.

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

203. PLAINTIFF is entitled to recovery for EFRAIN MARTINEZ's injuries and damages, including but not limited to, physical injuries, pain and suffering, severe psychological and emotional distress and death.

204. PLAINTIFF is entitled to punitive damages against CENTURION and MHM DEFENDANTS.

**COUNT XV
PUNITIVE DAMAGES
(CENTURION DEFENDANTS and MHM DEFENDANTS)**

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

206. 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 EFRAIN MARTINEZ, 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 Efrain Martinez, deceased.

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

C. Punitive damages in an undetermined amount against CENTURION DEFENDANTS and MHM DEFENDANTS;

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

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

Respectfully submitted,

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

IN THE MATTER OF THE WRONGFUL DEATH
OF EFRAIN PEREZ MARTINEZ, Deceased.

No. D-101-CV-2019-01045

**ORDER APPOINTING PERSONAL REPRESENTATIVE TO PURSUE WRONGFUL
DEATH CLAIM IN ACCORDANCE WITH § 41-2-3 NMSA 1978**

THIS MATTER comes before the Court on the Petition of Delores Rascon, for appointment as personal representative of the wrongful death estate of Efrain Perez Martinez. The Court has reviewed the petition, and being fully advised in the premises, **FINDS** that good cause exists for granting the petition for appointment of personal representative of the wrongful death estate of Efrain Perez Martinez.

THEREFORE, THIS COURT ORDERS that:

- A. The Petition is granted.
- B. The Petitioner, Delores Rascon, is hereby appointed Wrongful Death Personal Representative of the Estate of Efrain Perez Martinez, deceased, for the sole purpose of investigating and pursuing a wrongful death claim, pursuant to the New Mexico Wrongful Death Act, NMSA 1978 §41-2-1, et seq.
- C. The Petitioner will perform her fiduciary function as wrongful death personal representative in accordance with and pursuant to the New Mexico Wrongful Death Act, NMSA 1978 §41-2-1, et seq.
- D. The Petitioner will distribute any funds or proceeds of said wrongful death claim in accordance with and pursuant to the law.



MATTHEW J. WILSON
District Court Judge

04/18/19

4DPL

Submitted by:

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/s/ Parrish Collins

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