

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

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
4/11/2019 8:58 AM
STEPHEN T. PACHECO
CLERK OF THE COURT
Tamara Snee

GABRIEL MIERA,

Plaintiff,

v.

No. D-101-CV-2019-00989

Case assigned to Wilson, Matthew Justin

**CENTURION CORRECTIONAL
HEALTHCARE OF NEW MEXICO, LLC;
MHM HEALTH PROFESSIONALS, INC.;
JOSE ANDRADE M.D., STATE OF NEW MEXICO,
NEW MEXICO CORRECTIONS DEPARTMENT;
DAVID JABLONSKI; ANTHONY ROMERO;
DAVID SELVAGE; ORION STRADFORD;
STEVE MADRID; and JOHN DOES 1-10, (employees, staff,
Agents of New Mexico Corrections Department, Centurion
Correctional Healthcare of New Mexico, LLC,
and/or MHM Health Professionals, Inc., respectively),**

Defendants.

**COMPLAINT FOR
MEDICAL MALPRACTICE AND RELATED CLAIMS**

COMES NOW the Plaintiff, Gabriel Miera, by and through his attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and GUEBERT BRUCKNER GENTILE, P.C. (Terry R. Guebert, Robert Gentile and David S. Ketai), and for his cause of action states as follows:

PARTIES

1. Plaintiff, Gabriel Miera (hereinafter "PLAINTIFF"), is a New Mexico Corrections Department (NMCD) inmate.

2. PLAINTIFF was an inmate at Penitentiary of New Mexico (PNM), Santa Fe, New Mexico where the actions and inactions giving rise to the claims herein took place.

3. PLAINTIFF was previously housed by NMCD at Central New Mexico Correctional Facility (CNMCF) in the Long-Term Care Unit (LTCU) upon transfer from PNM.

4. PLAINTIFF is currently housed by NMCD at the Penitentiary of New Mexico, Santa Fe, New Mexico.

5. 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.

6. 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.

7. CENTURION is responsible for providing medical care to inmates in the New Mexico Department of Corrections prison system pursuant to a contract with that agency of the State of New Mexico that commenced on June 1, 2016 and continues to the present.

8. Jose Andrade, M.D. was the supervising and presiding doctor at PNM at all times relevant to this Complaint.

9. Defendant New Mexico Corrections Department is an entity of the State of New Mexico.

10. PNM and CNMCF are operated by the State of New Mexico by, under and through the New Mexico Department of Corrections.

11. Defendant State of New Mexico has authorized New Mexico Corrections Department (hereinafter “NMCD”) to operate the PNM, in Santa Fe, Santa Fe County, New Mexico and CNMCF in Los Lunas, Valencia County, New Mexico.

12. NMCD is responsible for contracting of medical services for all NMCD facilities including PNM and CNMCF.

13. 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.

14. 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.

15. David Selvage is, and was at all times relevant to this Complaint, serving as the Health Services Administrator for NMCD.

16. Orion Stradford is, and was at all times relevant to this Complaint, serving as the NMCD Bureau Chief.

17. 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.

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. MHM Health Professionals, Inc. (hereinafter “MHM”) provides medical personnel to CENTURION and upon information and belief is the employer of said medical personnel.

20. Upon information and belief, MHM, is a Delaware for profit corporation.

21. 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.

22. Upon information and belief, MHM is the employer of said medical personnel provided to CENTURION for purposes of providing medical services to NMCD inmates.

23. 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.”

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

25. MHM and it’s John Doe employees, staff and agents will be referred to herein collectively as “MHM.”

26. Upon information and belief, MHM is the employer of said medical personnel provided to CENTURION for purposes of providing medical services to NMCD inmates.

JURISDICTION AND VENUE

27. All acts complained of herein occurred in the PNM, Santa Fe County, State of New Mexico.

28. CENTURION’s registered agent is in Espanola, New Mexico.

29. 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.

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

31. 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).

32. 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.

33. 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.

FACTS COMMON TO ALL COUNTS

34. PLAINTIFF is a 32-year-old male.

35. PLAINTIFF was vulnerable to infection which was known to CENTURION DEFENDANTS.

36. PLAINTIFF began complaining of neck pain as early as December 3, 2018 as evidenced by the following Health Services Request (HSR) Form:

Date of Request (Fecha de solicitud): 12-3-18

FOR MEDICAL USE ONLY

Date Received: _____

Time Received: _____

Print Name (Imprimir su nombre): Gabriel Miera NMCD #: 66837

Housing Location (Ubicación de su vivienda): 504

Nature of problem or request (Naturaleza de su problema o solicitud):

(Circle One/Circule una opción) Medical - Medica Psychiatry - Siquiátrica Dental - Dental

I've had bad pain in my neck and back an cant
move well

37. As can be seen from the HSR form, he was complaining of “bad pain in my neck” and consequent immobility.

38. PLAINTIFF again sought medical attention on December 4, 2018 for severe back and neck pain, also reporting that he had not received prescribed muscle relaxants.

12-4-18	5:
	Pt. presents to North Clinic due to escalating complaints of upper back & neck pain. Pt. stated that he has not received prescribed muscle relaxants. Pt. states that he consumed all but 8 of 15 Ibuprofen 200mg given in KOP yesterday (1400 mg of Ibuprofen since 5pm 12/3). Pt. states that he is unable to sleep.

39. By December 11, 2018, PLAINTIFF was reporting that he was seeking chiropractic help from fellow inmates due to pain.

DATE	TIME	PROGRESS NOTES
12/11/18	1327	Last man woke up cricking neck - given muscle
Temp (F)	97.5	Muscle rub - Friend tried to fix neck (chiropractor)
HT (inches)	59"	Went to N/SH for watching got 2 meds
WT (lbs.)	152	Today can't feel hands
BMI	22.3	Can't sleep took Bendryl.

40. The December 17, 2018 Progress Notes again report that PLAINTIFF was seeking chiropractic care from fellow inmates:

DATE	TIME	PROGRESS NOTES
12.17.18	1016	⑤ Pt presents to s/c for neck
Temp (F)	97.8	pain s/p having fellow inmate "adjust"
HT (inches)	69"	his neck on 12/4/18. Since adjustment
WT (lbs.)	149	pt has had pain in neck, shoulders and
BMI	22	numbness on ② side. No L Rom, but pain
Pulse	82	still significant.
Respirations	16	
O2	97%	
BP	129/85	

41. PLAINTIFF's resort to chiropractic care from fellow inmates was in response to the lack of medical care provided by PNM, CENTURION and their respective employees, staff and agents.

42. The December 20, 2018 Progress Notes indicate continuing pain and the onset of numbness.

43. At that same visit, it is noted by the medical provider that his range of motion (ROM) was improved.

44. There was no improvement in PLAINTIFF's condition or range of motion.

45. This reporting was inaccurate.

DATE	TIME	PROGRESS NOTES
12/20/18	1305	③ Pt. returns to sick call for re-eval
Temp (F)	97.9	of neck, neck pain and numbness
HT (inches)	69"	to @ arm - beginning numbness.
WT (lbs.)	149	Pt. states today that this ROM is
BMI	23	improved, (able to raise arm more easily)
Pulse	64	but go's pain and numbness. Pt reports
Respirations	14	he has yet to begin his gait.
O2	99	Pt denies any bowel or bladder
BP	127/80	incontinence.
Peak Flow:		

46. By December 26, 2018, PLAINTIFF submitted a Health Services Request form stating that his pain was getting worse and that the right side of his body was numb, pleading to see a doctor.

(Circle One/Circule una opción) Medical - Medica Psychiatry - Siquiátrica Dental - Dental

My Pain's in my neck are getting worse &
My Right side of my body is numb, I am Really in Pain,
Please Set me up too See the Doctor Please. I ain't taken
Med's no more, So Please get me in A.S.A.P.

47. On December 30, 2018, PLAINTIFF submitted a Health Services Request pleading for help with his neck.

48. In the December 30, 2018 Health Services Request, PLAINTIFF went so far as to evoke his Eighth Amendment rights to proper medical care referencing United States Supreme Court ruling in *Estelle v. Gamble*.

(Circle One/Circule una opción) Medical - Medica Psychiatry - Siquiátrica Dental - Dental

For weeks I've been trying to get medical help about my neck. The Eighth Amendment protects my right to medical care. The Constitution guarantees me this right, even though it does not guarantee medical care to people outside of prison. The Supreme Court explained that this is because "(a) Inmate must rely on prison authorities to treat his medical needs; if the authorities or medical staff fail to do so, those needs will not be met." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). I feel that my right to adequate medical care has been violated.

Please take this into consideration.

49. Still, Defendants refused to provide adequate medical care for his emergent spinal infection.

50. Still, Defendants refused to refer PLAINTIFF to a specialist or other outside medical providers.

51. A December 31, 2018 musculoskeletal documentation was chocked full of falsehoods and inaccuracies which reflect the inhumane, grossly negligent medical care in reckless, willful and wanton disregard of PLAINTIFF's health and safety.

52. The December 31, 2018 musculoskeletal documentation stated that the pain in PLAINTIFF's neck did not affect his daily activities or participation in sports and recreation.

Subjective	PCN
Presents with chief complaint of:	My Neck
Affected body part?	Neck
How and when did injury occur?	
Impact on ADLs	0
Impact on participation in sports and recreation	0

53. This note was plainly inaccurate.

54. A December 31, 2018 musculoskeletal documentation indicated that there was no numbness in PLAINTIFF's extremities:

Inmate complains of	<input checked="" type="checkbox"/> Pain	<input type="checkbox"/> Pain radiation to leg(s)
<input type="checkbox"/> Tingling or numbness in leg(s) or extremity below injury	<input type="checkbox"/> Weakness of leg(s)	
<input type="checkbox"/> Loss of bladder or bowel control		
<input type="checkbox"/> Other:	HT: 5'9"	

55. This note was plainly inaccurate.

56. The December 31, 2018 musculoskeletal documentation indicated that there were no problems with PLAINTIFF's gait.

If low back pain, describe gait when inmate approached for examination
0

57. This note was plainly inaccurate.

58. They assessed PLAINTIFF with "alteration in comfort" diagnosing as strains, sprains and minor trauma.

Assessment	
Alteration in comfort	
Related to:	
<input type="checkbox"/> Low Back Pain (Lumbar Strain)	<input checked="" type="checkbox"/> Strains, Sprains and Minor Trauma

59. This note was plainly inaccurate.

60. On January 2, 2019, acute and chronic cervical radiculopathy and recent fall were noted during a sick call.

61. On January 2, 2019, PLAINTIFF was transferred to the ER at Christus St. Vincent (CSV).

62. On January 2, 2019, it was noted that PLAINTIFF suffered epidural abscess and osteomyelitis, which was diagnosed at CSV:

NEW MEXICO CORRECTIONS DEPARTMENT PROBLEM LIST				
DIAGNOSIS DATE	DIAGNOSIS (Provider and RN Only)	PROVIDER/ RN SIGNATURE	FACILITY	RESOLVED DATE
1/2/19	Epidural Abscess Osteomyelitis	<i>[Signature]</i>	LTCU	
1/3/19	C5-6 Discectomy w/ Fusion, Partial Corpectomy w/ Allograft AND ANT. locking plate.			
1/10/19	C5-6 Laminectomy w/ Bilat MASS SCREWS w/ Rods placement AND Arthrodesis			

63. Upon information and belief, based upon the available CENTURION medical records, PLAINTIFF was never seen by a medical doctor for his emergent spinal abscess and osteomyelitis prior to transfer to CSV.

64. Upon information and belief, the first medical doctor to see PLAINTIFF was at (CSV) after transfer.

65. The February 4, 2019 progress notes by CSV doctor John C. Sort, D.O. indicate the following diagnosis:

Central cord synd at unsp level of cerv spinal cord, subs (HC Category)
S/p C5-C6 anterior discectomy and fusion with partial corpectomy and
C5-C6 laminectomy and arthrodesis with placement of lateral mass screws bilaterally with
connecting rods.
Recommend comprehensive rehabilitation program to include intensive PT and OT and
Physiatrist, Case Manager, Rehab RN.

Osteomyelitis of cervical spine (HC Category)
Maxipime. Infectious Disease was consulted on acute medical unit.

66. February 5, 2019 CSV progress notes by Michael Palestine, M.D. further reiterate PLAINTIFF's medical issues resulting from the PNM acquired infection, while also noting that he had made little progress with movement in his hands and arms.

Problem List:

Patient Active Problem List

Diagnosis

- Epidural abscess
- Urinary retention
- Dyspnea
- Osteomyelitis of cervical spine (HC Category)
- Central cord synd at unsp level of cerv spinal cord, subs (HC Category)
- Osteomyelitis (HC Category)
- Impaired mobility
- Decreased activities of daily living (ADL)

Impression and Plan:

02/05/2019: Patient continues to complain of neck pain and has had made little progress with regard to upper extremity movement of his hands and arms. He was found to have a

67. PLAINTIFF was transferred from CSV to the LTCU at CNMCF on February 7, 2019 after a 36 day stay at CSV.

ADMISSION TO BE COMPLETED BY HEALTHCARE PROVIDER ADMITTING PATIENT TO THE INFIRMARY

Date: 2/7/19 Time: 11:00

S: History of Present Illness: 33yo ♂ w/ Epidural Abscess, Osteomyelitis of C-spine,
w/ CENTRAL CARD SYNDROME w/ IMPAIRED MOBILITY AND urinary RE-
TENSION Req PERIODIC CATHETERIZATION. Found to have Pseudomonas
AERUGINOSA OF C-SPINE on IV CEFEPIME 2g q8h 3/2/19
1/31/10 s/p C5-10 LAMINECTOMY AND ARTHRODESIS w/ LATERAL MASS SCREWS
linked w/ connecting RODS.

68. Upon information and belief, Medicaid and/or Medicare paid the costs of PLAINTIFF's medical care at Christus St. Vincent.

69. CENTURION DEFENDANTS deviated from the standard of care as follows:

- a. Failure to record vitals;
- b. Failure to perform adequate physical examination;
- c. Failure to investigate the cause of lower back pain;
- d. Failure to refer the patient for higher/specialty care; and
- e. Significant and inexcusable delay in the diagnosis of lumbar L5-S1 diskitis.

70. As a result of the reckless, wanton and willful disregard for PLAINTIFF's emergent spinal infection, PLAINTIFF was hospitalized for 36 days at Christus St. Vincent's Hospital.

71. The State of New Mexico and NMCD have a non-delegable duty to provide for proper, necessary and competent medical care for all inmates in the care of NMCD.

72. NMCD is responsible, on behalf of the State of New Mexico, for the provision of proper, necessary and competent medical care of NMCD inmates.

73. To meet its duty to provide medical care to NMCD inmates, NMCD contracted with CENTURION for the provision of medical services to NMCD inmates.

74. CENTURION, by the terms of the General Services Contract, #16-770-1300-0097 (hereinafter “GSC”), was contracted by NMCD for the purposes of providing medical care to inmates in the NMCD prison system, including PLAINTIFF.

75. The term of the GSC began on June 1, 2016 and continues to the present.

76. By contract with the State of New Mexico, CENTURION is responsible for medical care to inmate patients at the PNM, including PLAINTIFF.

77. The GSC delegation of responsibility for medical care to NMCD inmates does not lessen the duties of the State of New Mexico or NMCD to insure proper, necessary and competent medical care to NMCD inmates.

78. NMCD’s duty to provide proper, necessary and competent medical care to NMCD inmates remains intact despite the assignment of said duties to outside contractors, including CENTURION.

79. NMCD DEFENDANTS failed to enforce critical terms of the GSC essential to the protection of the health and safety of NMCD inmates.

80. NMCD DEFENDANTS failed to hold CENTURION to the standards of the ACA or NCCHC.

81. NMCD DEFENDANTS failed to hold CENTURION to the standard of care under New Mexico law.

82. NMCD DEFENDANTS failed to establish any standard of care for CENTURION’s provision of medical care for NMCD inmates.

83. NMCD DEFENDANTS failed to properly oversee, monitor, supervise and manage CENTURION's operation of medical facilities and provision of medical services to PNM inmates, including PLAINTIFF.

84. NMCD DEFENDANTS failed to take corrective action against CENTURION despite clear knowledge of the negligent and reckless provision of medical care by CENTURION.

85. Instead, in conspiracy with CENTURION, NMCD routinely denies medical grievances and, upon information and belief, has not found in favor of an inmate since at least 2012.

86. David Jablonski and Anthony Romero were responsible and did set the tone, customs and standards for the routine denial of inmate medical care.

87. David Jablonski and Anthony Romero breached their responsibilities for overseeing the provision of the medical care under the GSC with CENTURION.

88. David Selvage, as Health Services Administrator, breached his responsibilities for management of medical services, including oversight and enforcement of the GSC.

89. Orion Stradford, as Bureau Chief, was directly responsible for the oversight and management of the GSC.

90. Orion Stradford breached his duties to properly manage the GSC, allowing CENTURION to repeatedly violate the medical standards under the ACA, NCCHC and New Mexico law.

91. Steve Madrid, as the Grievance Manager Administrator, has created, implemented and maintained a grievance process that routinely denies the rights of inmates to administrative remedies, which in turn lead to ongoing neglect of inmate medical needs.

92. Steve Madrid did so create, implement and maintain said defective grievance process for the purpose of denying inmates their rights to adequate medical care.

93. The collective behavior of the aforementioned NMCD DEFENDANTS in conspiracy with CENTURION and MHM has led to the routine denial of basic medical care to inmates, including PLAINTIFF.

94. The collective behavior of the aforementioned NMCD DEFENDANTS in conspiracy with CENTURION and MHM has led to the routine denial of basic infection control among inmates, including PLAINTIFF.

95. The collective behavior of the aforementioned NMCD DEFENDANTS in conspiracy with CENTURION and MHM has led to the routine denial of basic minimal healthcare.

96. The collective behavior of the aforementioned NMCD DEFENDANTS in conspiracy with CENTURION and MHM has led to a failure to provide basic infection control, which has led to multiple, very serious spinal infections, to include multiple cases of diskitis, osteomyelitis, and sepsis.

97. These repeated inmate infections have resulted in extensive and permanent injuries to inmates, including PLAINTIFF, and at least one death.

98. These cases of spinal infection represent a pattern of severe, callous, wanton, willful and deliberate indifference to the health, safety and lives of inmates, including PLAINTIFF.

99. In addition to the gross negligence and reckless, willful and wanton disregard of PLAINTIFF's medical needs, NMCD took away good time for PLAINTIFF's time in the hospital.

100. NMCD routinely takes away good time for time spent in a hospital.

101. This too represents a pattern of misconduct in coordination between NMCD and

Centurion.

102. ACA Mandatory Standard 4-4351 requires that there be a written plan for 24-hour emergency medical, dental and mental health services available.

103. ACA Mandatory Standard 4-4359 requires that there is a plan in place for the treatment of offenders with chronic conditions.

104. ACA Mandatory Standard 4-4359 requires that chronic care treatment plans for offenders must address the monitoring of medications, laboratory testing, the use of chronic care clinics, health record forms, and the frequency of specialist consultation and review.

105. ACA Mandatory Standard 4-4362 requires intake medical screenings for offender transfers, excluding intra-system transfers, and commences upon offender arrival at the facility.

106. ACA Mandatory Standard 4-4362 requires that medical screenings for offender transfers be performed by health-trained or qualified health care personnel.

107. ACA Mandatory Standard 4-4362 requires that all medical screenings for inmate transfers be recorded on a screening form approved by the health authority.

108. ACA Mandatory Standard 4-4365 requires that a comprehensive health appraisal be completed for each offender, excluding intra-system transfers, after arrival at the facility.

109. ACA Mandatory Standard 4-4380 requires that the facility has a designated health authority with responsibility for on-going health care services pursuant to a written agreement, contract or job description.

110. ACA Mandatory Standard 4-4381 requires that the clinical decisions be the sole province of the responsible physician and will not be countermanded by non-clinicians.

111. ACA Mandatory Standard 4-4382 requires that facility health care services be

provided by qualified health care personnel.

112. ACA Mandatory Standard 4-4382 requires that the duties and responsibilities of facility qualified health care personnel be governed by written job descriptions and those are on file at facility and approved by health authority.

113. ACA Mandatory Standard 4-4382 requires that if offenders are treated by health care personnel other than a licensed provider, that the care is provided pursuant to written standing or direct orders by personnel authorized by law.

114. NCCHC Essential Standard P-E-03 requires that a transfer screening be performed by qualified health professionals on all intra-system transfers.

115. NCCHC Essential Standard P-E-03 requires that all aspects of the standard are addressed by written policy and defined procedures.

116. NCCHC Essential Standard P-E-04 requires that inmates receive an initial health assessment.

117. NCCHC Essential Standard P-E-04 requires that all positive findings (i.e., history and physical, screening, and laboratory) are reviewed by treating clinician.

118. NCCHC Essential Standard P-E-04 requires that all positive findings have developed diagnostic and therapeutic plans for each problem as clinically indicated.

119. NCCHC Essential Standard P-E-04 requires that all aspects of the standard are addressed by written policy and defined procedures.

120. NCCHC Essential Standard P-E-08 requires that the facility provides 24-hour emergency medical, dental, and mental health services.

121. NCCHC Essential Standard P-E-12 requires that all aspects of care are coordinated

and monitored from admission to discharge.

122. NCCHC Essential Standard P-E-12 requires clinician orders are evidence-based and are implemented in a timely manner.

123. NCCHC Essential Standard P-E-12 requires that all aspects of the standard are addressed by written policy and defined procedures.

124. NCCHC Essential Standard P-G-01 requires that patients with chronic diseases are identified.

125. NCCHC Essential Standard P-G-01 requires that patients with chronic diseases be enrolled in a chronic disease program (to decrease frequency and severity of symptoms, prevent progression and complication and foster improved function).

126. NCCHC Essential Standard P-G-01 requires that the responsible physician establishes and annually approves clinical protocols consistent with *national clinical practice guidelines*.

127. NCCHC Essential Standard P-G-01 requires that documentation in the medical record confirm that clinicians are following chronic disease protocols.

128. NCCHC Essential Standard P-G-01 requires that all aspects of the standard are addressed by written policy and defined procedures.

129. NCCHC Essential Standard P-G-02 requires that a proactive program exist that provides care for special needs patients who require close medical supervision and multidisciplinary care.

130. NCCHC Essential Standard P-G-02 requires that individual treatment plans are developed by a physician or other qualified clinician at the time the condition is identified and

updated when warranted.

131. NCCHC Essential Standard P-G-02 requires that all aspects of the standard are addressed in written policy and defined procedure.

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

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

133. In undertaking the diagnosis, care and treatment of PLAINTIFF, 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.

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

135. 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 PLAINTIFF's spinal infection;
- 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 PLAINTIFF's spinal infection;

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

g. Failure to protect and preserve the health of PLAINTIFF.

136. As a direct and proximate result of the negligent acts and omissions CENTURION, its 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.

137. CENTURION, its employees, staff and agents' failures to assess, treat and manage PLAINTIFF's spinal infection 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
(All Defendants)

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

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

140. 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 PLAINTIFF's injuries.

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

142. CENTURION's medical staff at PNM lacked sufficient expertise to assess, treat

and manage PLAINTIFF's health conditions.

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

144. 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 PLAINTIFF's injuries.

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

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

147. 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.

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

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

150. 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.

151. 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
NEGLIGENT OPERATION OF A MEDICAL FACILITY
(CENTURION DEFENDANTS)**

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

153. 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.

154. CENTURION employees, staff and agents were unqualified to care for spinal infection, and yet refused to refer PLAINTIFF to specialists.

155. CENTURION DEFENDANTS were negligent in failing to properly assess, treat and manage PLAINTIFF's spinal infection.

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

157. 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, CENTURION DEFENDANTS breached their duty to medically treat PLAINTIFF in a reasonably prudent manner.

158. CENTURION DEFENDANTS failed to properly address PLAINTIFF's medical condition.

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

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

161. CENTURION had a duty to properly screen, supervise, educate, and train its employees regarding infection control within the facility.

162. CENTURION had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of spinal infection patients.

163. On information and belief, CENTURION 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 emergent abscesses.

164. 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.

165. 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.

166. CENTURION does not comply with ACA, NCCHC or New Mexico legal standards of care.

167. 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.

168. The actions of CENTURION DEFENDANTS were negligent, willful, wanton, and in gross and reckless disregard for PLAINTIFF's well-being entitling PLAINTIFF to punitive damages thereon.

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

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

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

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

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

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

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

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

176. CENTURION's medical staff at PNM lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

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

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

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

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

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

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

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

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

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

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

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

188. 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.

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

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

191. 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.

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

193. 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 V
NEGLIGENT HIRING, TRAINING AND SUPERVISION
(CENTURION DEFENDANTS and MHM DEFENDANTS)

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

195. CENTURION and MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of spinal infection patients.

196. 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 PLAINTIFF's spinal infection.

197. CENTURION and MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of spinal infection patients.

198. 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.

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

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

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

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

203. 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.

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

COUNT VI
NEGLIGENT HIRING, TRAINING AND SUPERVISION
(NMCD DEFENDANTS)

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

206. The ACA and NCCHC set mandatory minimum standards for training of both medical personnel and non-medical personnel in the provision of medical services in a prison.

207. NMCD DEFENDANTS have knowingly allowed, aided and abetted in CENTURION's failure to meet the standards of care under ACA and NCCHC accreditation and to comply with the minimum mandatory standards of the ACA and NCCHC on hiring, training and supervision.

208. NMCD DEFENDANTS have been complicit in the failure to abide by ACA and NCCHC minimum mandatory standards for hiring, training and supervision.

209. NMCD DEFENDANTS have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards on hiring, training and supervision.

210. NMCD DEFENDANTS have failed to properly maintain oversight and enforcement of the GSC, resulting in violations of the ACA and NCCHC minimum mandatory standards on hiring, training and supervision.

211. 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
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(CENTURION DEFENDANTS)**

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

213. CENTURION DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for his spinal infection.

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

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

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

Defendants.

217. 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 VIII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(NMCD DEFENDANTS)**

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

219. NMCD DEFENDANTS failed to take corrective action against CENTURION despite clear knowledge of the reckless, wanton and willful refusal of CENTURION to provide necessary medical care to PLAINTIFF.

220. NMCD DEFENDANTS failed to properly and seriously consider medical grievances filed by PLAINTIFF.

221. NMCD DEFENDANTS denied said grievances despite clear evidence of the reckless, wanton and willful refusal of CENTURION to provide necessary medical care to PLAINTIFF.

222. NMCD DEFENDANTS routinely denied PLAINTIFF's grievances without due consideration of the grievances.

223. NMCD DEFENDANTS have, by their routine denial of PLAINTIFF's medical grievances without due consideration, established a *de facto* policy of automatic denial of PLAINTIFF's grievances.

224. The conduct of NMCD DEFENDANTS was extreme, outrageous and intentional.

225. PLAINTIFF suffered severe emotional distress as a result of the conduct of NMCD DEFENDANTS.

226. 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 IX
NEGLIGENCE *PER SE*
(All Defendants)

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

228. 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.”

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

230. 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.

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

COUNT X
CIVIL CONSPIRACY
(NMCD DEFENDANTS and CENTURION DEFENDANTS)

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

233. The facts illustrated above show a conspiracy on the part of NMCD DEFENDANTS and CENTURION DEFENDANTS to commit the acts and inactions set forth in the Statement of Facts in support of COUNTS I-IX above.

234. 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 and CENTURION DEFENDANTS.

235. 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.

236. PLAINTIFF is entitled to punitive damages against CENTURION DEFENDANTS.

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

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

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

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

COUNT XII
RESPONDEAT SUPERIOR AND AGENCY
(NMCD)

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

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

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

COUNT XIII
RES IPSA LOQUITUR
(All Defendants)

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

244. The injuries and damages suffered by PLAINTIFF were proximately caused by wanton, willful and reckless actions and inactions by CENTURION DEFENDANTS and NMCD DEFENDANTS.

245. It was CENTURION's responsibility to manage and control their medical staff and the care and treatment of PLAINTIFF.

246. It was NMCD DEFENDANTS' duty to ensure that CENTURION DEFENDANTS provided constitutionally adequate medical care to PLAINTIFF.

247. 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 CENTURION DEFENDANTS and NMCD DEFENDANTS.

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

249. 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.

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

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

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

252. 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, Gabriel Miera;

B. Compensatory damages against all Defendants, jointly and severally, in an amount

to be determined by this Court as adequate for NMCD DEFENDANTS and CENTURION DEFENDANTS' 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.

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-and-

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