

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

EUGENIO S. MATHIS, as personal
representative of THE ESTATE OF
ABELARDO MONTES, deceased,

Plaintiff,

v.

No. D-101-CV-2021-02300

WEXFORD HEALTH SOURCES, INC.;
STATE OF NEW MEXICO; NEW MEXICO
CORRECTIONS DEPARTMENT;
CORECIVIC of TENNESEE, LLC.;
and JOHN DOES 1-10 in their individual and
official capacities, (employees, staff, agents of
WEXFORD HEALTH SOURCES, INC.;
STATE OF NEW MEXICO; NEW MEXICO
CORRECTIONS DEPARTMENT;
CORECIVIC of TENNESEE, LLC, respectively).

Case assigned to Wilson, Matthew Justin

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS

COMES NOW, the PLAINTIFF, EUGENIO S. MATHIS, as personal representative of
the ESTATE OF ABELARDO MONTES, by and through his attorneys, COLLINS & COLLINS,
P.C. (Parrish Collins) and SANDOVAL FIRM (Richard A. Sandoval) and for PLAINTIFF's cause
of action states as follows:

I. PARTIES

A. *PLAINTIFF*

1. ABELARDO MONTES ("Mr. Montes) was at all times relevant to this complaint,
a New Mexico Corrections Department ("NMCD") inmate.

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

B. NEW MEXICO CORRECTIONS DEPARTMENT

3. DEFENDANT NMCD and NWNMCF are entities of the State of New Mexico.

4. NWNMCF is operated by NMCD.

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

6. NMCD is responsible for contracting of medical services for all NMCD facilities including NWNMCF.

7. At all material times, NMCD and, NWNMCF 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 are responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency and/or apparent agency.

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

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

C. WEXFORD HEALTH SOURCES, INC.

10. The contract for prison medical services between Wexford Health Sources, Inc. (“Wexford”) and the State of New Mexico, Professional Services Contract (“PSC”) # 20-770-1200-0043, was, upon information and belief, executed in Santa Fe, New Mexico.

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

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

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

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

D. CORECIVIC OF TENNESSEE, LLC

15. CoreCivic of Tennessee, LLC (“CoreCivic”) is under contract to manage and operate NWNMCF.

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

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

18. CoreCivic is not entitled to protections under the New Mexico Tort Claims Act.

19. CoreCivic , its John Doe employees, staff and agents will be collectively referred to as CoreCivic DEFENDANTS.

II. JURISDICTION AND VENUE

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

21. A Tort Claims Notice was timely sent on November 4, 2020. (Ex. 1).

22. PLAINTIFF asserts that PLAINTIFF exhausted all available administrative remedies as required under N. M. S. A. 1978, § 33-2-11.

23. Jurisdiction over Wexford is proper in New Mexico State District Court due to lack

of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

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

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

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

27. 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).

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

III. STATEMENT OF FACTS

A. MEDICAL FACTS

29. At all times relevant to this complaint, Abelardo Montes was a 54-year-old man.

30. On or about September 28, 2020, Mr. Montes presented to Wexford Health with injuries. He was diagnosed with cracked ribs and a possible punctured lung.

31. Mr. Montes was advised he would have to be taken to an outside medical provider for evaluation and treatment of his injuries.

32. At the time a Tort Claim Notice was sent in this case, November 4, 2020, Mr. Montes had still not been treated for his injuries from on or about September 28, 2020 despite his multiple filed complaints. The complaints were ignored.

33. Mr. Montes presented to Wexford Health for the complaints of dizziness and cough on November 7, 2020. He was noted to have temperature of 102.4 and an oxygen saturation of 89%. These levels are suggestive of severe pneumonia. Mr. Montes also had hypotension with blood pressure of 66/42 mmHg.

34. Severe pneumonia and hypotension were exacerbated by Mr. Montes' diabetes mellitus and hypertension of the coronary artery.

35. These additional risk factors should necessitate early referral and admission to a designated hospital ward or intensive care unit for timely evaluation and appropriate management of severe pneumonia.

36. NMCD Medical Providers failed to refer Mr. Montes in a timely manner.

37. Due to the delay in the transfer to a hospital on 11/07/2020 and failure to initiate appropriate management, Mr. Montes had rapid deterioration to severe sepsis with septic shock secondary to acute viral pneumonia complicated by post-viral bacterial pneumonia, adult respiratory distress syndrome, acute hypoxic and hypercapnic respiratory failure, acute renal failure with hyperkalemia, hyperphosphatemia and hypocalcemia, mixed metabolic and respiratory acidosis, severe thrombocytopenia, atrial fibrillation with rapid ventricular rate and hypoxic encephalopathy.

38. Mr. Montes died on 11/13/2020 and cause of death was noted as COVID-19 infection with multiorgan failure.

39. The delay in providing adequate medical care and management for pneumonia and broken ribs was grossly negligent.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

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

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

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

43. NMCD can intercede to protect an inmate if independent contractors are not appropriately caring for NMCD inmates.

44. NMCD can intercede on behalf of an inmate to act on a medical grievance.

45. None of the NMCD Defendants interceded to protect Mr. Montes from gross and reckless medical negligence at NWNMCF.

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

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

48. NMCD routinely ignores medical grievances.

49. NMCD routinely destroys medical grievances.

50. NMCD routinely fails to process medical grievances correctly.

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

52. NMCD routinely retaliates against inmates for filing medical grievances.

53. NMCD routinely retaliates against inmates for seeking legal counsel and sending Tort Claims Notices.

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

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

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

57. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including Mr. Montes.

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

59. 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.

60. NMCD DEFENDANTS, by and through employees, staff and agents, knew of Mr. Montes's history of pneumonia and broken ribs and with wanton, willful and deliberate indifference ignored Mr. Montes's medical grievances, ignored National Commission on Correctional Health Care ("NCCHC") emergent medical condition, ignored the American Correctional association ("ACA") guidelines on treating emergent medical condition and otherwise completely failed to take action within its authority to protect the health of Mr. Montes.

61. NMCD understands and recognizes that failure to treat pneumonia and broken ribs constitutes recklessness under New Mexico law.

62. NMCD understands and recognizes that failure to treat pneumonia and broken ribs constitutes deliberate indifference under federal law.

63. NMCD had full authority to enforce the GSC.

64. NMCD had at all times relevant to this COMPLAINT the authority to compel Wexford to treat Mr. Montes's pneumonia and broken ribs.

65. NMCD has obtained substantial budgets for treatment of pneumonia.

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

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

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

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

70. 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.

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

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

72. NMCD recklessly chose not to exercise any control over the manner in which Wexford performed their duties, leading to Mr. Montes's pneumonia and other complications.

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

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

75. NMCD recklessly chose not to exercise any control over the manner in which its Wexford performed their duties leading to Mr. Montes's pneumonia and other complications.

76. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Montes's history of pneumonia and broken ribs and failed to provide necessary and proper medical care to protect Mr. Montes's health and safety.

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

77. WEXFORD HEALTH SOURCES, INC. (herein after "Wexford") submitted a TECHNICAL PROPOSAL FOR RFP #20-770-19-06067 ("Wexford TechProp") for Inmate Medical Services dated August 21, 2019.

78. Wexford TechProp was over 830 pages long.

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

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

81. Wexford TechProp did not mention punitive damages.

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

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

84. The PSC was 65 pages in length.

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

86. The PSC did not mention the word "tort."

87. The PSC did not mention punitive damages.

88. The PSC did not provide for Tort Claims Act protection for Wexford or its respective employees, staff and agents.

89. Tort Claims Act protection for Wexford and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.

90. Protection from punitive damages for Wexford, and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.

91. The PSC was entered freely by Wexford on or about October 18, 2019.

92. The PSC was in effect at times relevant to this Complaint.

93. Wexford had the legal capacity to enter the PSC.

94. Wexford was legally competent to enter the PSC.

95. There was mutual assent on the part of Wexford and NMCD in the negotiation and execution of the PSC.

96. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the PSC.

97. The PSC was not vague.

98. The PSC was not oppressive to Wexford.

99. The PSC was not void as a matter of public policy.

100. Wexford is and was at all relevant times bound by the terms of the PSC.

101. The PSC is fully enforceable against Wexford as written and executed.

102. By the terms of the PSC, Wexford is an independent contractor performing professional services for the Agency.

103. By the terms of the PSC, Wexford, its employees and agents, are not employees of the state of New Mexico:

9. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico.

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

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

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

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

108. In its Wexford TechProp, which culminated in the PSC, Wexford stated:

E.A.I.G. Insurance and Taxes

Wexford Health agrees to act as an Independent Contractor in our performance of the services required by the Agreement. Upon contract award, we will comply with all of the following insurance and tax requirements.

- **Professional Liability insurance:** As shown by our COI, we carry professional liability (medical malpractice) insurance on all Wexford Health-employed medical professionals. Our policy not only meets, but also exceeds the RFP-required minimums of \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually. Our standards for independently contracted firms and clinicians require them to maintain similar insurance coverage.

109. The PSC states the same insurance coverage for Wexford:

Professional Liability - "Occurrence" type, if available; if not "Claims Made" type with an acceptable "tail"; Medicare malpractice covering professional staff - \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually.

110. The PSC requires Wexford to indemnify NMCD and the State of New Mexico as follows:

23. Indemnification.

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

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

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

113. Upon information and belief, the employees and staff of Wexford were not covered by the New Mexico Public Liability Fund during the term of the GSC.

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

115. The PSC as executed called for payments of \$60,768,709.90 in the second year and \$62,591,771.20 for the third year.

116. Wexford DEFENDANTS, by and through employees, staff and agents, knew of Mr. Montes's history of broken ribs and risks of infection including pneumonia and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

D. FACTS COMMON TO ALL DEFENDANTS

117. ALL DEFENDANTS, including as-yet unidentified JOHN DOE DEFENDANTS, individually knew of Mr. Montes's history of broken ribs and susceptibility to infection, including

pneumonia, and with wanton, willful and deliberate indifference ignored Mr. Montes's medical grievances and deliberately refused to provide necessary and proper medical care.

118. ALL DEFENDANTS knew that Mr. Montes was in need of immediate treatment for his broken ribs and pneumonia.

119. ALL DEFENDANTS knew that Mr. Montes's chronic pneumonia was worsening.

120. ALL DEFENDANTS knew that untreated chronic pneumonia could lead to organ damage.

121. ALL DEFENDANTS knew that the failure to treat chronic pneumonia and broken ribs constitutes recklessness under New Mexico law.

122. ALL DEFENDANTS knew that the failure to treat chronic pneumonia and broken ribs constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

123. ALL DEFENDANTS knew that the failure to treat chronic pneumonia and broken ribs constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

124. ALL DEFENDANTS were complicit and acquiesced in the denial of proper medical care to Mr. Montes

125. ALL DEFENDANTS conspired together to deny Mr. Montes necessary and proper medical care leading to the physical pain, severe emotional and psychological pain and suffering, severe and permanent physical injuries from complications from untreated and improperly treated Mr. Montes's chronic pneumonia and broken ribs, which resulted in severe sepsis, post-viral bacterial pneumonia, adult respiratory distress syndrome, acute hypoxic and hypercapnic respiratory failure, acute renal failure with hyperkalemia, hyperphosphatemia and hypocalcemia, mixed metabolic and respiratory acidosis, severe thrombocytopenia, atrial fibrillation with rapid ventricular rate and hypoxic encephalopathy.

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

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

127. In undertaking the diagnosis, care and treatment of Mr. Montes, Wexford, its employees, staff and agents were under a duty to possess and apply the knowledge, skill, and care that is used by reasonably well-qualified healthcare providers in the local community.

128. Wexford, their employees, staff and agents breached their duties and were negligent in the management of Mr. Montes's health and well-being.

129. The negligence, errors, acts and omissions of Wexford include, but are not limited to:

- a. Failure to establish, maintain and enforce evaluation, diagnosis and treatment guidelines and standards;
 - b. Failure to evaluate, treat and manage Mr. Montes's medical condition;
 - c. Failure to take the reasonable steps to acquire proper treatment of Mr. Montes;
 - d. Failure to refer Mr. Montes to appropriate specialists;
 - e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of broken ribs and pneumonia;
 - f. Failure to provide Mr. Montes with necessary and proper pain management;
- and
- g. Failure to protect and preserve the health of Mr. Montes.

130. As a direct and proximate result of the negligent acts and omissions Wexford, its employees, staff and agents, Mr. Montes 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.

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

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

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

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

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

135. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to Mr. Montes.

136. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to Mr. Montes.

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

138. 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.

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

140. NMCD determined not to enforce the NCCHC standards.

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

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

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

144. NMCD’s indifference to national standards for the constitutionally acceptable medical care of inmates and NMCD’s allowance of Wexford to provide services far below constitutional standards led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to Mr. Montes.

145. 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.

146. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates, including Mr. Montes.

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

148. 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.

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

150. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of Mr. Montes.

151. As a result of the foregoing, Mr. Montes suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress and death, for which PLAINTIFF is entitled to damages.

**COUNT III: NEGLIGENCE
(ALL DEFENDANTS)**

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

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

154. NMCD DEFENDANTS negligently failed to oversee Wexford in the provision of medical care to NMCD inmates, which contributed to Mr. Montes's injuries.

155. NMCD DEFENDANTS failed to take corrective action against Wexford in the clear face of recurrent and consistent negligent and reckless medical care to NMCD inmates, which contributed to Mr. Montes's injuries and death.

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

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

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

159. NMCD DEFENDANTS negligently failed to enforce critical terms of the GSC, including but not limited to, failure to compel NWNMCF and/or Wexford to obtain accreditation by the ACA and NCCHC, which contributed to PLAINTIFF's injuries.

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

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

162. NMCD DEFENDANTS negligently and recklessly failed to ensure that inmates, including Mr. Montes, were receiving proper medical care, including proper referral to specialists.

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

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

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

166. 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 Mr. Montes's injuries and death.

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

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

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

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

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

172. Due to the epidemic of MRSA, osteomyelitis and other infection disease in NMCD facilities state-wide, including NWNMCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of Mr. Montes.

173. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including Mr. Montes.

174. 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.

175. As such, NMCD has negligently operated NWNMCF, a public facility in which it incarcerated Mr. Montes.

176. NMCD has created a risk to all inmates including Mr. Montes at NWNMCF, as all inmates are owed adequate healthcare.

177. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of Mr. Montes.

178. As a result of the foregoing, Mr. Montes suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress and death, for which PLAINTIFF is entitled to damages.

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

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

180. Wexford is entrusted with the medical care of inmates who have no other source of medical care by contract with the State of New Mexico and NMCD.

181. Wexford employees, staff and agents were unqualified to care for Mr. Montes, and yet refused to refer him to specialists.

182. Wexford employees, staff and agents were unqualified and delayed proper treatment for Mr. Montes from September 5, 2018 to March 19, 2019 when he was finally sent to UNMH for treatment.

183. Wexford DEFENDANTS' actions and inactions in failing to properly assess, treat and manage Mr. Montes's pneumonia, broken ribs and other related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of Mr. Montes.

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

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

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

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

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

189. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by Wexford administrators to approve referrals to specialists.

190. Wexford DEFENDANTS failed to properly address Mr. Montes's medical condition.

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

192. Such conduct amounts to negligence in the treatment of Mr. Montes.

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

194. Wexford had a duty to allow Mr. Montes's on-site medical providers make referrals to specialists.

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

196. On information and belief, Wexford failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage Mr. Montes's multiple medical conditions, including pneumonia, broken ribs and related health conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210. Wexford has a duty under the GSC, ACA and NCCHC to properly refer Mr. Montes to be seen by a physician who could effectively treat PLAINTIFF.

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

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

213. NMCD DEFENDANTS knew that Wexford was not properly and adequately treating Mr. Montes's medical condition.

214. NMCD DEFENDANTS knew that Wexford was not referring Mr. Montes to outside medical healthcare providers who could effectively and prudently treat Mr. Montes.

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

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

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

218. Such conduct amounts to negligence in the treatment of Mr. Montes.

219. The actions of NMCD were negligent, reckless, willful, wanton, and deliberately indifferent to the health of Mr. Montes.

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

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

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

223. NMCD DEFENDANTS have been complicit in the failure to adhere to the basic constitutional correctional healthcare set forth by the NCCHC through NMCD's failure to enforce the GSC.

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

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

226. 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;

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

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

227. NMCD is ultimately responsible for providing adequate health care to those it incarcerates, and to protect those inmates from risks associated with increased risks of infection or other medical emergencies.

228. Due to the epidemic of MRSA, osteomyelitis and other infection disease in NMCD facilities state-wide, including NWNMCF, NMCD had a heightened duty of care for the protection of inmate's from infections, including protecting Mr. Montes from the complications of pneumonia

229. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including Mr. Montes.

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

231. 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.

232. NMCD did not enforce the GSC or take proper enforcement actions against Wexford, resulting in inadequate healthcare to its inmates, including Mr. Montes.

233. The failures of NMCD DEFENDANTS led to the injuries and death of Mr. Montes.

234. As a result of the foregoing, Mr. Montes suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress for which PLAINTIFF is entitled to damages.

**COUNT VI: FAILURE TO ADEQUATELY MAINTAIN OR REPAIR PREMISES
(NMCD)**

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

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

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

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

239. NMSC has a duty to keep its premises safe for inmate use.

240. NMSC failed to use ordinary care to keep Mr. Montes safe at NWNMCF.

241. Such conduct constitutes negligence.

242. As a result of the NMCD's failure to adequately maintain or repair the premises at NWNMCF, Mr. Montes suffered broken ribs and other related medical issues, pain and suffering, and psychological and emotional distress for which PLAINTIFF is entitled to damages.

**COUNT VII: FAILURE TO ADEQUATELY MAINTAIN OR REPAIR
PREMISES
(CORECIVIC)**

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

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

245. CoreCivic managed and has authority over NWNMCF.

246. CoreCivic has authority and control over the operation of NWNMCF.

247. CoreCivic has a duty to keep its premises safe for inmate use.

248. CoreCivic failed to use ordinary care to keep Mr. Montes safe at NWNMCF.

249. Such conduct constitutes negligence.

250. As a result of the CoreCivic's failure to adequately maintain or repair the premises at NWNMCF, Mr. Montes suffered broken ribs and other related medical issues, pain and suffering, and psychological and emotional distress for which PLAINTIFF is entitled to damages.

**COUNT VIII: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(Wexford)**

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

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

253. On information and belief, Wexford failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage Mr. Montes's pneumonia and broken ribs.

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

255. Wexford are bound by the GSC to obtain and maintain ACA and NCCHC accreditation under the terms of the GSC.

256. Wexford has not established any standards for medical care.

257. NMCD routinely violates NMCD and the GSC medical treatment and care policies and provisions.

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

259. Wexford's negligent hiring, training and supervision were the proximate cause of Mr. Montes's injuries and damages for which PLAINTIFF is entitled to damages including, but

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

260. Wexford's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of Mr. Montes.

261. Wexford had a duty to allow Mr. Montes's medical providers to make referrals to specialist.

262. Wexford breached this duty with decisions for referral of inmates made by Wexford corporate administrators rather than inmate medical providers.

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

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

265. Approval of referrals by Wexford corporate administrators are made on costs rather than medical grounds.

266. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by Wexford administrators to approve referrals to specialists.

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

268. PLAINTIFF is entitled to punitive damages against Wexford.

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

**COUNT IX: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(NMCD DEFENDANTS)**

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

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

272. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of pneumonia and broken ribs.

273. 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 Mr. Montes's pneumonia, broken ribs and related health conditions.

274. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of pneumonia and broken ribs.

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

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

277. NMCD failed to enforce the GSC.

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

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

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

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

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

**COUNT X: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Wexford)**

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

284. Wexford DEFENDANTS intentionally denied Mr. Montes proper and necessary medical care for his pneumonia and broken ribs.

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

286. The conduct of Wexford DEFENDANTS was extreme, outrageous, and intentional and in deliberate disregard for Mr. Montes's mental health.

287. Mr. Montes suffered severe emotional distress as a result of the conduct of DEFENDANTS.

288. As a result of the foregoing, Mr. Montes has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress and death, for which PLAINTIFF is entitled to damages, including punitive damages.

**COUNT XI: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE
(Wexford)**

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

290. The facts illustrated above show a conspiracy on the part of NMCD DEFENDANTS, Wexford to deny Mr. Montes necessary, proper and constitutionally minimal medical care.

291. As a result of said conspiracy, Mr. Montes suffered severe physical and emotional distress as a result of the conduct of NMCD DEFENDANTS, Wexford.

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

293. PLAINTIFF is entitled to damages, including punitive damages, against Wexford.

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

295. PLAINTIFF is entitled to punitive damages against Wexford DEFENDANTS.

**COUNT XII: *RESPONDEAT SUPERIOR* AND AGENCY
(Wexford)**

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

297. Wexford are responsible to PLAINTIFF under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

298. Wexford are responsible to PLAINTIFF under the doctrine of agency for the conduct of its employees, staff and agents.

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

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

300. Waivers of immunity apply to this Count under NMSA §41-4-6, NMSA §41-4-9

and NMSA §41–4–10.

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

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

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

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

304. The injuries and damages suffered by Mr. Montes were proximately caused by wanton, willful and reckless actions and inactions ALL DEFENDANTS.

305. It was the responsibility of Wexford to manage and control their medical staff and the care and treatment of Mr. Montes.

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

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

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

309. PLAINTIFF is entitled to punitive damages against Wexford DEFENDANTS.

**COUNT XV: PUNITIVE DAMAGES
(Wexford)**

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

311. The acts and omissions complained of in the causes of action stated above, upon information and belief, are believed to be of such an egregious nature, in reckless, wanton, willful, deliberate and total disregard to the health of Mr. Montes, 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 Wexford DEFENDANTS' intentional infliction of emotional distress;

C. Punitive damages in an undetermined amount against Wexford;

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:

COLLINS & COLLINS, P.C.

/s/ Parrish Collins

Parrish Collins

P. O. Box 506

Albuquerque, NM 87103

505-242-5958

parrish@collinsattorneys.com

-and-

SANDOVAL FIRM

/s/ Richard A. Sandoval

Richard A. Sandoval
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Attorneys for Plaintiff

EXHIBIT 1

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Albuquerque, NM 87103
Telephone: (505) 242-5958 Fax (505) 242-5968

November 4, 2020

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

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

Office of General Counsel
Brian Fitzgerald
New Mexico Corrections Department
PO Box 27116
Santa Fe, NM 87502-0116
Via Fax only to (505)-827-8533

Betty Judd, Warden
NWNMCF-CoreCivic
P.O. Box 800
Grants, New Mexico 87020
Via USPS only

Re: **Subject:** Abelardo Montes (NMCD #87824)
Date of Incident: September 28, 2020 and on-going
Location: Northwestern New Mexico Correctional Facility (NWNMCF)
Violations of Law: Failure to Treat Injuries from a Slip and Fall) & Deliberate Indifference to Health and Safety

Gentlemen\Mesdames:

This letter is intended to provide written notice to the above captioned parties under the Tort Claims Act, NMSA 1978, §§ 41-4-1 to -4-27 regarding the actions and inactions of the Western New Mexico Correctional Facility its employees, staff contractors and other agents in their failure to treat Mr. Abelardo Montes for his injuries stemming from a slip and fall which has resulted in serious and permanent injury.

Facts

On September 28, 2020, Mr. Abelardo Montes slipped and fell on the grounds of the correctional facility. Mr. Montes was evaluated by Dr. Denning who ordered imaging studies be conducted. He was advised that he had cracked ribs and a possible punctured lung. Mr. Montes was advised that he needed to be taken to an outside medical provider for more thorough evaluation and treatment of his injuries. However, this has not taken place, according to Mr. Montes, as he was

November 4, 2020

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told that Covid-19 would currently bar being taken to an outside medical provider. He reports having filed multiple informal complaints without positive outcome and that he is considerable physical pain. The continuing lack of proper evaluation and treatment of his injuries constitutes deliberate indifference to his medical condition.

Preservation of Evidence:

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Mr. Montes including:

1. All medical records, sick call slips, medical grievances, photographs, videos, investigative files, communications, audit trails, audit log files, reports or any other documents and evidence.
2. All communications of whatsoever kind related to Mr. Montes and related to the #1 above and his medical care generally to include mail, emails, text, electronic messaging, voicemails, memorandum or other communications related to the medical care of Mr. Montes.
3. His complete, unredacted inmate file including all disciplinary records and a full location history.
4. All recorded phone calls to which Mr. Montes was a party from June 1, 2020 to the present.

Please also preserve all of the items above in the original electronic format in which they are entered, created, stored, maintained and archived.

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

Sincerely,

COLLINS & COLLINS, P.C.

/s/Parrish Collins

Parrish Collins

PC/gtg

cc: Robert Gentile
David Ketai

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>

Sent: Wednesday, November 4, 2020 1:00 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 013223

Result: OK

End Time: Wed 04 Nov 2020 12:59:40

File Name: 11.4.20 - TCN with Spoliation, DIL.pdf

Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>

Sent: Wednesday, November 4, 2020 1:01 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 013225

Result: OK

End Time: Wed 04 Nov 2020 13:01:10

File Name: 11.4.20 - TCN with Spoliation, DIL.pdf

Category: Sending Jobs

Result Job Type Address

OK FAX 5058272969

Thanks,