

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

ANDREW ROBINSON,

PLAINTIFF,

v.

No. D-101-CV-2021-01896

CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC; MHM HEALTH PROFESSIONALS, LLC; STATE OF NEW MEXICO; NEW MEXICO CORRECTIONS DEPARTMENT; and JOHN DOES 1-10 in their individual and official capacities, (employees, staff, agents of CENTURION Correctional Healthcare of New Mexico, LLC, MHM Health Professionals, LLC, State of New Mexico, New Mexico Correctional Department, respectively).

Case assigned to Biedscheid, Bryan

DEFENDANTS.

COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS

COMES NOW, the PLAINTIFF, ANDREW ROBINSON, by and through his attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and SANDOVAL FIRM (Richard A. Sandoval), and for his cause of action states as follows:

I. PARTIES

A. PLAINTIFF

1. ANDREW ROBINSON (“PLAINTIFF”) 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 Lea County Correctional Facility (“LCCF”), a NMCD facility.

3. PLAINTIFF is currently residing in No 4 La Villaita Tres, Albuquerque, NM 87112.

B. NEW MEXICO CORRECTIONS DEPARTMENT

4. DEFENDANTS NMCD and LCCF are entities of the State of New Mexico.

5. LCCF is operated by NMCD.

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

7. NMCD is responsible for contracting of medical services for all NMCD facilities including LCCF.

8. At all material times, NMCD, CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC (“CENTURION”), and MHM HEALTH PROFESSIONALS, LLC (“MHM”) acted through their respective owners, officers, directors, employees, agents or apparent agents, including, but not limited to, administrators, management, nurses, doctors, technicians and other staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency and/or apparent agency.

9. NMCD DEFENDANTS have a duty to provide for the safety and security for those they incarcerate.

10. NMCD governs LCCF, while independent contractors carry out discrete duties at the discretion of NMCD.

C. CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC

11. CENTURION entered a contract, General Services Contract #16-770-1300-0097 (“GSC”), with the State of New Mexico that commenced on June 1, 2016 and ended on or about November 2019.

12. 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.

13. At all times material to this Complaint, 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.

14. During the term of the GSC, CENTURION provided a “comprehensive health care delivery system” to NMCD, which includes billing services, utilization management, general health care services administration, and on-site medical staff provided through an independent contractor, MHM Health Professionals, LLC.

15. Upon information and belief, JAMES NIELSON and MATTHEW ROUNSEVILLE, were the authorized medical authorities in the medical care of PLAINTIFF at all times relevant to this complaint.

16. CENTURION was not and is not a public body as evidenced their repeated assertions to that fact.

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

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

19. CENTURION was not at times relevant to this Complaint licensed to practice medicine in New Mexico.

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

D. MHM HEALTH PROFESSIONALS, LLC.

21. MHM Health Professionals, LLC. (“MHM”) is under contract with CENTURION to provide medical providers to CENTURION.

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

23. MHM provides medical personnel to CENTURION, including those medical personnel providing medical services at LCCF during the term of the GSC.

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

25. MHM was not a party to the GSC.

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

27. MHM had no direct contractual relations with NMCD, the State of New Mexico or LCCF for the provision of medical services during the term of the GSC.

28. MHM had no direct contractual relations with NMCD, the State of New Mexico or LCCF for the provision of medical services from June 2016 to November 2019.

29. 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.

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

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

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

33. MHM and its John Doe employees, staff and agents will be referred to herein collectively as MHM Defendants.

E. CENTURION AND MHM PART OF INTEGRATED ENTERPRISE CENTENE CORPORATION

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

35. Upon information and belief, in 2011 Centene Corporation formed a wholly owned subsidiary Centurion Group, Inc. for the sole purpose of forming a joint venture with MHM Services, Inc.

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

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

38. In 2019, Centene had revenue in excess of \$70 billion.

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

40. Upon information and belief, upon formation, the board of directors of Centurion, LLC consisted of seven individuals; three board of directors from Centene Corporation, and four board of directors from MHM Services, Inc.

41. Upon information and belief, the purpose of Centurion, LLC was to form wholly owned subsidiaries in different states for the sole purpose of holding and bidding on state-specific contracts.

42. Upon information and belief, to this end in July 2015, Centurion, LLC formed a wholly owned subsidiary called Centurion Correctional Healthcare of New Mexico, LLC (“CENTURION”) to bid on the correctional health care contract with the New Mexico Corrections Department.

43. Upon information and belief, at all material times hereto, CENTURION was a wholly owned subsidiary of Centurion, LLC, which was a joint venture between Centurion Group, Inc. and MHM Services, Inc.

44. Upon information and belief, the seven-person board of directors of Centurion, LLC oversaw the operations of CENTURION.

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

46. Upon information and belief, at all material times, the health care providers and the managerial staff working in NMCD facilities under CENTURION were employed by MHM.

47. Upon information and belief, health care providers at LCCF, including individually named JAMES NIELSON, MATTHEW ROUNSEVILLE, were employed by MHM.

48. Upon information and belief, at all material times, personnel that provided human resources, payroll, financial and legal support for CENTURION were employed by MHM Services, Inc.

49. Upon information and belief, prior to the acquisition, and at all material times hereto, Centene Corporation, through CENTURION, was a fifty-one percent (51%) owner in the joint venture and was responsible for providing corporate support to CENTURION, including tax filings, claims processing for “outside the walls” claims and network contract negotiations.

50. Upon information and belief, prior to the acquisition, and at all material times hereto, MHM Services, Inc. was a forty-nine percent (49%) owner in the joint venture and was responsible for providing CENTURION with legal support, human resources, credentialing, payroll, benefit plans, finance, IT and office services, including marketing, proposal writing and pricing of requests for proposals.

51. Upon information and belief, at all materials times, the salaries of the individually and John Doe named CENTURION Defendants, including individually named defendants, were funded fifty-one percent (51%) by Centene Corporation, through Centurion Group, Inc. and/or Centurion, LLC, and forty-nine percent (49%) by MHM Services, Inc.

52. Upon information and belief, expenses and losses of CENTURION were funded fifty-one percent (51%) by Centene Corporation, through Centurion Group, Inc and/or Centurion, LLC., and forty-nine percent (49%) by MHM Services, Inc.

53. Upon information and belief, at all materials times, Centene Corporation, MHM Services, Inc. and Centurion, LLC had access to CENTURION's financial books and records.

54. Upon information and belief, all MHM employees serving under CENTURION are insured through MHM.

55. Upon information and belief, CENTURION and Centene Corporation are identified as "additional named insured" on insurance policies issued to MHM.

56. In its February 18, 2016 Technical Response to NMCD's request for proposals, CENTURION publicized their corporate structure with statements such as:

Centurion is a partnership between Centene Corporation, a Fortune 500 Medicaid managed care company with 32 years of managed care experience, and MHM Services, Inc., a national leader in providing healthcare services to correctional systems. Centurion brings together the ideal mix of MHM's long history of unparalleled client satisfaction and management expertise in the correctional

environment with Centene's Medicaid managed care prowess, to provide a level of innovative service approaches never before seen in correctional healthcare.

Centurion, LLC was formed as a joint venture created and co-owned by two mature, strong parent companies that after each being in business over 30 years are experienced in maintaining a solid corporate structure most beneficial to their industries; MHM in correctional healthcare, and Centene in Medicaid managed care services. Centurion's corporate organization was strategically planned to meet the challenges and support the needs of statewide inmate healthcare delivery system like the NMCD.

57. CENTURION, MHM, Centene Corporation, MHM Services, Inc. and Centurion, LLC are an integrated enterprise, agents of one another, alter egos of one another, and instrumentalities of one another.

II. JURISDICTION AND VENUE

58. All acts complained of herein occurred in LEA COUNTY, New Mexico.

59. A Tort Claims Notice was timely sent on 1/10/2020.

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

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

62. 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.

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

64. 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).

65. 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. FACTS

66. PLAINTIFF, Andrew Robinson, was at the time relevant to this complaint a 25-year-old male NMCD inmate.

67. PLAINTIFF had a significant medical history making him susceptible to infections including osteomyelitis.

68. On 08/07/2019, PLAINTIFF reported acute low back pain rating his pain at 10/10.

69. PLAINTIFF continued to complain of severe back pain up through 08/22/2019, at which time he reported radiating pain to and limited range of motion in his legs.

70. By 08/31/2019, he was reporting that the pain had been ongoing for over a month and that he was having difficulty walking, moving, and sleeping.

71. By 09/25/2019, PLAINTIFF was unable to ambulate straight, and he was using a cane to walk.

72. Throughout the almost 2 months of severe spinal pain leading to physical incapacity, no blood tests, MRIs, or CT scans were taken.

73. At a minimum, an MRI should have been taken in August 2019 due to PLAINTIFF's complaints and his susceptibility to infection.

74. Due to PLAINTIFF's susceptibility to infection and the high rate of MRSA, osteomyelitis, and sepsis in NMCD facilities, the failure to conduct proper and timely diagnostics was grossly negligent, reckless, and deliberately indifferent to the medical needs of PLAINTIFF.

75. The following are as of yet unidentified medical personnel who were aware of PLAINTIFF's emergent medical condition and his complaints of severe pain for almost two months, and who failed to order proper diagnostic studies:

ms 24 hours			
OB/GYN CAMP STAS			
U medicine 8.8.19			
name	79352	5.3.95	LECK
	NMCD#	DOB	Facility

R. Plumer

re Dennis Dress MD
Dennis Dress

Andrew Pettig RN
Andrew

sergio san

76. As a result of the grossly negligent, reckless, and deliberately indifferent failure to provide proper medical care to PLAINTIFF, PLAINTIFF suffered osteomyelitis and discitis for

which he was hospitalized at UNMH from 10/08/2019 to 10/19/2019 and 11/10/2019 to 11/15/2019.

77. The onset of osteomyelitis and discitis, as well as the consequent 16 days of hospitalizations, were easily avoidable with proper medical care.

78. PLAINTIFF will suffer a lifetime of spinal issues including pain and disability as a result of grossly negligent, reckless and deliberately indifferent failure to provide proper medical care to PLAINTIFF.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

79. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within LCCF.

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

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

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

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

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

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

86. NMCD is supposed to work with CENTURION/MHM in addressing and/or resolving inmate medical grievances.

87. NMCD routinely ignores medical grievances.
88. NMCD routinely destroys medical grievances.
89. NMCD routinely fails to process medical grievances correctly.
90. When medical grievances are addressed, NMCD routinely and without medical justification finds against inmates filing medical grievances.
91. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at LCCF.
92. During the term of the GSC, NMCD did not find in favor of a single NMCD inmate housed at LCCF.
93. NMCD does not consult with objective medical experts in the review of medical grievances.
94. The decision of whether or not to substantiate a medical grievance is made by non-medical NMCD personnel.
95. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including PLAINTIFF.
96. NMCD's medical grievance abuses outlined above are a proximate cause of injuries to the PLAINTIFF.
97. NMCD's medical grievance abuses create an unsafe environment at NMCD facilities including LCCF under NMSA §41-4-6 and constitutes negligent operation of a medical facility under NMSA §41-4-9.
98. NMCD DEFENDANTS, by and through their employees, staff and agents, knew of PLAINTIFF's emergent infection and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances, ignored National Commission on Correctional Health Care

(“NCCHC”) emergent medical condition, failed to take action within its authority to protect the health of PLAINTIFF.

99. NMCD understands and recognizes that failure to treat osteomyelitis constitutes recklessness under New Mexico law.

100. NMCD understands and recognizes that failure to treat osteomyelitis constitutes deliberate indifference under federal law.

101. NMCD had full authority to enforce the GSC.

102. NMCD had at all times relevant to this COMPLAINT the authority to compel CENTURION/MHM to treat osteomyelitis.

103. NMCD has obtained substantial budgets for treatment of osteomyelitis.

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

105. NMCD through the grievance process can control the manner in which its CENTURION/MHM can perform their duties.

106. NMCD, through the terms of the GSC, can control the manner in which CENTURION/MHM can perform their duties.

107. NMCD through NMCD policies and regulations can control the manner in which CENTURION/MHM can perform their duties.

108. 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.

109. NMCD recklessly chose not to exercise any control over the manner in which CENTURION/MHM performed their duties, which led to PLAINTIFF’S osteomyelitis.

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

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

112. NMCD recklessly chose not to exercise any control over the manner in which its CENTURION/MHM performed their duties leading to the osteomyelitis.

113. NMCD DEFENDANTS, by and through employees, staff and agents, knew of PLAINTIFF's emergent infection and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

C. FACTS SPECIFIC TO CENTURION DEFENDANTS

114. The GSC was executed by NMCD and CENTURION on or about June 1, 2016.

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

116. CENTURION's Tech Response was over 1200 pages long.

117. CENTURION's Tech Response did not mention the Tort Claims Act.

118. CENTURION's Tech Response did not mention the word "tort."

119. CENTURION's Tech Response did not mention punitive damages.

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

121. The GSC was 80 pages in length.

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

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

124. The GSC did not mention punitive damages.

125. The GSC did not provide for Tort Claims Act protection for CENTURION or its respective employees, staff, agents, staffing agencies or other vendors.

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

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

128. The GSC was freely entered into by CENTURION on or about June 2016.

129. The GSC was in effect from June 2016 to November 2019.

130. CENTURION had the legal capacity to enter the GSC.

131. CENTURION was legally competent to enter the GSC.

132. There was mutual assent on the part of CENTURION and NMCD in the negotiation and execution of the GSC.

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

134. The GSC was not vague.

135. The GSC was not oppressive to CENTURION.

136. The GSC was not void as a matter of public policy.

137. CENTURION is and was at all relevant times bound by the terms of the GSC.

138. The GSC is fully enforceable against CENTURION as written.

139. The GSC states:

8. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing general services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or

any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.

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

141. By the terms of Paragraph 8 of the GSC, CENTURION and is not an employee of the State of New Mexico.

142. By the terms of Paragraph 8 of the GSC, CENTURION employees and agents are independent contractors.

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

144. CENTURION has repeatedly taken the position (as recently as March 6, 2020 and March 9, 2020) that it is not a public entity subject to IPRA.

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

146. In CENTURION's Tech Response, the proposed contract for New Mexico Department of Corrections would be part of the insurance program that is '*currently in place* for CENTURION.' (*emphasis added*).

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

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

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

150. As part of its CENTURION TechResponse, CENTURION provided audits and proof of its “financial stability.”

151. In support of its “financial stability,” CENTURION submitted documents with its CENTURION Tech Response showing that its co-parents generated over \$16.29 billion in fiscal revenue for the 2015 fiscal year.

152. The GSC states:

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

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

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

154. CENTURION was not licensed to practice medicine in New Mexico during the term of the GSC.

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

156. Centurion was the medical provider at LCCF during the term of the GSC.

157. CENTURION was not covered by the New Mexico Public Liability Fund during the term of the GSC for medical care provided at LCCF.

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

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

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

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

162. Upon transfer of an NMCD inmate during the term of the GSC, CENTURION paid no inmate hospital medical bills for inmate hospital stays over 24 hours.

163. The total costs of hospitalizations for PLAINTIFF due to the gross negligence, reckless and deliberately indifferent failure to provide medical care was \$32,250.82.

164. CENTURION paid \$0.00 for the hospital stays in excess of 24 hours for PLAINTIFF's medical care.

165. Upon information and belief, CENTURION delays transport of critically ill inmates to outside hospitals until such time that it is highly probable that the inmate will remain in the hospital for 24 hours or more.

166. CENTURION, through said delays in treatment, deliberately shifts the costs of medical care for critically ill inmates to Medicaid.

167. CENTURION was paid over \$150 million during the term of the GSC.

168. JAMES NIELSON, MATTHEW ROUNSEVILLE knew of PLAINTIFF's emergent infection and with wanton, willful and deliberate indifference ignored PLAINTIFF's complaints of severe pain and deliberately refused to provide necessary and proper medical care.

169. ALL DEFENDANTS collectively knew of PLAINTIFF's emergent infection and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances and deliberately refused to provide necessary and proper medical care.

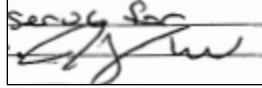
170. The following employees, staff and agents of CENTURION, whose names have not yet been identified, knew of PLAINTIFF's emergent infection and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances and deliberately refused to provide necessary and proper medical care.

24 hours			
CBC/ CMP STAT			
U monitor 8.5.19			
draw	79352	5.3.91	LECK
	NMCD#	DOB	Facility

R. Plummer

re Dennis Drey JDS
Dennis Drey

M. Pettig RN
ndrew



171. CENTURION DEFENDANTS, by and through employees, staff and agents, knew of PLAINTIFF's emergent infection and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

D. FACTS SPECIFIC TO MHM DEFENDANTS

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

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

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

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

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

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

186. MHM was not a party to the GSC.

187. MHM is a third party to the GSC.

188. MHM DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's emergent infection and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

E. FACTS COMMON ALL DEFENDANTS

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

190. ALL DEFENDANTS knew that PLAINTIFF was in need of immediate treatment to control PLAINTIFF's emergent infection.

191. ALL DEFENDANTS knew that the failure to treat an emergent infection constitutes recklessness under New Mexico law.

192. ALL DEFENDANTS knew that the failure to treat an emergent infection constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

193. ALL DEFENDANTS knew that the failure to treat an emergent infection constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

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

195. ALL DEFENDANTS conspired together to deny PLAINTIFF necessary and proper medical care leading to the physical pain, severe emotional and psychological pain and suffering, and severe and permanent physical injuries from complications from untreated and improperly treated infection, all of which resulted in osteomyelitis.

**COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE
(CENTURION, MHM)**

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

197. In undertaking the diagnosis, care and treatment of PLAINTIFF, CENTURION and MHM, their 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.

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

199. The negligence, errors, acts and omissions of CENTURION/MHM, include, but are not limited to:

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

200. As a direct and proximate result of the negligent acts and omissions CENTURION, MHM, their employees, staff and agents, PLAINTIFF suffered a rapid and significant deterioration in PLAINTIFF's health, along with physical, emotional, and psychological pain and suffering not presently determinable, but to be proven at the time of trial.

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

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

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

203. PLAINTIFF's negligence claims fall under NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

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

205. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.

206. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.

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

208. 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.

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

210. NMCD determined not to enforce the ACA standards.

211. NMCD determined not to seek ACA accreditation for its facilities while CENTURION was the medical provider.

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

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

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

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

216. Due to the epidemics of MRSA, osteomyelitis and other infectious disease in NMCD facilities state-wide, including LCCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of PLAINTIFF.

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

218. 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.

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

220. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of PLAINTIFF.

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

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

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

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

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

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

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

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

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

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

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

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

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

233. NMCD knew, and knows, that all referrals for specialist care are made by CENTURION/MHM administrators outside of NMCD medical facilities.

234. 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.

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

236. 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.

237. NMCD DEFENDANTS negligently, recklessly and deliberately failed to hold CENTURION/MHM to standards and guidelines of the ACA or NCCHC.

238. NMCD DEFENDANTS negligently, recklessly and deliberately failed to hold CENTURION/MHM to the medical standard of care established under New Mexico law, which contributed to PLAINTIFF's injuries.

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

240. NMCD has a duty to operate LCCF in a safe and reasonably prudent manner.

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

242. Due to the epidemics of MRSA, osteomyelitis and other infectious disease in NMCD facilities state-wide, including LCCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of PLAINTIFF.

243. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including PLAINTIFF.

244. 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.

245. As such, NMCD has negligently operated LCCF, a public facility in which it incarcerated PLAINTIFF.

246. NMCD has created a risk to all inmates including PLAINTIFF at LCCF, as all inmates are owed adequate healthcare.

247. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of PLAINTIFF.

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

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

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

250. CENTURION/MHM 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.

251. CENTURION/MHM employees, staff and agents were unqualified to care for PLAINTIFF, and yet refused to refer PLAINTIFF to specialists.

252. CENTURION/MHM employees, staff and agents were unqualified and delayed proper treatment for PLAINTIFF from September 5, 2018, to March 19, 2019 when he was finally sent to UNMH for treatment.

253. CENTURION/MHM DEFENDANTS' actions and inactions in failing to properly assess, treat and manage PLAINTIFF's osteomyelitis and related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of PLAINTIFF.

254. CENTURION/MHM DEFENDANTS' actions and inactions in failing to properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF were negligent, reckless, wanton and in deliberate disregard for the health of PLAINTIFF.

255. 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/MHM DEFENDANTS breached their duty to medically treat PLAINTIFF in a reasonably prudent manner.

256. Decisions for referral of inmates to specialists are made by CENTURION,/MHM corporate administrators rather than inmate medical providers.

257. No referral to a specialist may be made without first gaining approval from CENTURION/MHM corporate administrators.

258. On-site medical providers do not have the authority to directly refer an inmate to a specialist without approval of CENTURION/MHM corporate administrators.

259. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by CENTURION/MHM administrators to approve referrals to specialists.

260. CENTURION/MHM DEFENDANTS failed to properly address PLAINTIFF's medical condition.

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

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

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

264. CENTURION/MHM had a duty to allow PLAINTIFF's on-site medical providers make referrals to specialists.

265. CENTURION/MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering osteomyelitis.

266. On information and belief, CENTURION/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 multiple medical conditions, including osteomyelitis and related health conditions.

267. CENTURION/MHM is bound by the GSC to obtain and maintain ACA and NCCHC accreditation under the terms of the GSC.

268. CENTURION/MHM do not comply with ACA, NCCHC or New Mexico standards of healthcare.

269. 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.

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

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

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

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

273. NMCD has authority over all NMCD correctional facilities, including LCCF.

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

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

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

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

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

279. CENTURION/MHM's medical staff at LCCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

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

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

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

283. NMCD DEFENDANTS knew that CENTURION/MHM was not properly or adequately treating PLAINTIFF's medical condition.

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

285. NMCD knew that CENTURION/MHM corporate administrators were making costs rather than medically based decisions on referrals of inmates, including PLAINTIFF, to proper specialists.

286. NMCD knew that CENTURION/MHM corporate administrators were routinely denying referrals of inmates to specialists on costs, rather than medical, grounds.

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

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

289. The actions of NMCD were negligent, reckless, willful, wanton, and deliberately indifferent to the health of PLAINTIFF.

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

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

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

293. 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.

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

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

296. 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.

297. 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.

298. Due to the epidemic of MRSA, osteomyelitis and other infectious disease in NMCD facilities state-wide, including LCCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of PLAINTIFF.

299. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including PLAINTIFF.

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

301. 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.

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

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

304. 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 VI: NEGLIGENT HIRING, TRAINING AND SUPERVISION
(CENTURION, MHM)**

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

306. CENTURION/MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering osteomyelitis.

307. On information and belief, CENTURION, 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 osteomyelitis.

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

309. CENTURION/MHM are bound by the GSC to obtain and maintain ACA and NCCCHC accreditation under the terms of the GSC.

310. CENTURION/MHM have not established any standards for medical care.

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

312. CENTURION/MHM have not trained or supervised its employees, staff and agents in any standards of medical care.

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

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

315. CENTURION/MHM had a duty to allow PLAINTIFF's medical providers to make referrals to specialist.

316. CENTURION/MHM breached this duty with decisions for referral of inmates made by CENTURION/MHM corporate administrators rather than inmate medical providers.

317. No referral to a specialist may be made without first gaining approval from CENTURION/MHM corporate administrators.

318. On-site medical providers do not have the authority to directly refer an inmate to a specialist without approval of CENTURION/MHM corporate administrators.

319. Approval of referrals by CENTURION/MHM corporate administrators are made on costs, rather than medical, grounds.

320. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by CENTURION, MHM administrators to approve referrals to specialists.

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

322. PLAINTIFF is entitled to punitive damages against CENTURION/MHM.

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

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

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

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

326. On information and belief, NMCD failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage PLAINTIFF's osteomyelitis and related health conditions.

osteomyelitis

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

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

329. NMCD failed to enforce the GSC.

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

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

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

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

334. 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.

**COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(CENTURION, MHM)**

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

336. CENTURION/MHM DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for his osteomyelitis.

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

338. CENTURION/MHM DEFENDANTS retaliated against PLAINTIFF by taking away his admission in the Echo Project for treatment of his osteomyelitis knowing his osteomyelitis was worsening his health conditions, because of a disciplinary action.

339. The conduct of CENTURION/MHM DEFENDANTS was extreme, outrageous, and intentional and in deliberate disregard for PLAINTIFF's mental health.

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

341. 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 IX: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE
(CENTURION, MHM)**

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

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

344. 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, CENTURION, MHM.

345. 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.

346. PLAINTIFF is entitled to damages, including punitive damages, against CENTURION, MHM.

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

348. PLAINTIFF is entitled to punitive damages against CENTURION, MHM DEFENDANTS.

**COUNT X: RESPONDEAT SUPERIOR AND AGENCY
(CENTURION, MHM)**

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

350. CENTURION/MHM are responsible to PLAINTIFF under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

351. CENTURION/MHM are responsible to PLAINTIFF under the doctrine of agency for the conduct of its employees, staff and agents.

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

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

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

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

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

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

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

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

358. It was the responsibility of CENTURION/MHM to manage and control their medical staff and the care and treatment of PLAINTIFF.

359. 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/MHM DEFENDANTS.

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

361. 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.

362. PLAINTIFF is entitled to punitive damages against CENTURION/MHM DEFENDANTS.

COUNT XIII: PUNITIVE DAMAGES
(CENTURION, MHM)

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

364. 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 PLAINTIFF, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter these types of acts and omissions from occurring in the future, may well be appropriate.

WHEREFORE, PLAINTIFF requests judgment as follows:

- A. Compensatory damages against all DEFENDANTS, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to PLAINTIFF;
- B. Compensatory damages against all DEFENDANTS, jointly and severally, in an amount to be determined by this Court as adequate for CENTURION, MHM DEFENDANTS' intentional infliction of emotional distress;
- C. Punitive damages in an undetermined amount against CENTURION, MHM;
- D. Costs incurred by PLAINTIFF, including pre-judgment and post-judgment interest; and
- E. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

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