

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

**MANUELA VIGIL**, Personal Representative  
of the **ESTATE OF DAVID VIGIL**, Deceased,

Plaintiff,

v.

No. D-101-CV-2018-00033

Case assigned to Shaffer, Gregory S.

**CENTURION CORRECTIONAL  
HEALTHCARE OF NEW MEXICO, LLC**, and  
**BARRY J. BEAVEN, M.D.**,

Defendants.

**COMPLAINT FOR MEDICAL NEGLIGENCE AND NEGLIGENCE,  
LACK OF INFORMED CONSENT, NEGLIGENT HIRING, TRAINING AND  
SUPERVISION, RES IPSA LOQUITUR, INJUNCTIVE RELIEF  
AND PUNITIVE DAMAGES**

COMES NOW the Plaintiff, Manuela Vigil, Personal Representative of the Estate of David Vigil, Deceased, by and through her attorneys COLLINS & COLLINS, P.C. (Parrish Collins, Esq.) and SANDOVAL FIRM (Richard A. Sandoval, Esq.) and for her cause of action states as follows:

**PARTIES**

1. Plaintiff, Manuela Vigil, was appointed Personal Representative of the Estate of David Vigil, Deceased, on July 31, 2017, and is a resident of Albuquerque, Bernalillo County, New Mexico (hereinafter "Plaintiff"); David Vigil, died on July 7, 2017.

2. Prior to his wrongful death, Plaintiff was an inmate at Central New Mexico Correctional Facility (hereinafter "CNMCF") in Los Lunas, New Mexico.

3. Centurion Correctional Healthcare of New Mexico, LLC (hereinafter "Centurion") is a domestic limited liability company registered to do business in New Mexico, whose registered agent for service of process is CT Corporation System, 206 S. Coronado Avenue, Espanola, New

Mexico, 87532-2792.

4. At all material times, Centurion acted through its owners, officers, directors, employees, agents or apparent agents, including, but not limited to, administrators, management, nurses, doctors, technicians and other staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency or apparent agency.

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

6. By contract with the State of New Mexico, Centurion is solely responsible for medical care to inmate patients in the Long-Term Care Unit (LTCU) at Central New Mexico Correctional Facility.

7. Upon information and belief, Barry J. Beaven, M.D., is an employee of Centurion.

8. Upon information and belief, Barry J. Beaven, M.D., as an agent for Centurion, was responsible for the care of patients in the LTCU at all times relevant to this complaint.

#### **JURISDICTION AND VENUE**

9. All acts complained of herein occurred in Los Lunas, Estancia County, State of New Mexico.

10. Centurion's registered agent is in Espanola, New Mexico.

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

12. Jurisdiction and venue are proper with this Court pursuant to NMSA § 38-3-1 (A).

13. David Vigil is deceased, therefore, the Prison Litigation Reform Act is inapplicable.

#### **STATEMENT OF FACTS**

14. Mr. Vigil had a history of a seizure disorder, Hepatitis C (HCV), poly-substance

abuse, depression Hypertension, epilepsy, Insulin-dependent Diabetes Mellitus (DM), Cerebrovascular Accident (CVA) and diabetic neuropathy in both feet.

15. Mr. Vigil had been recurrently evaluated at the Bernalillo County Metropolitan Detention Center (MDC) for opiate withdrawal.

16. Mr. Vigil was taking Fluoxetine and Mirtazapine for anxiety and depression and Oxcarbazepine for epilepsy

17. During his incarceration at the Metropolitan Detention Center, from April 26, 2017 to April 27, 2017, Mr. Vigil reported for a sick call, complaining of a head cold and back/neck aches.

18. Mr. Vigil walked very slowly to get to the SC Nurse and noted that he was very tired and that his body hurt.

19. Mr. Vigil complained of red/itchy eyes, stuffy nose, sneezing, sore throat, cough, fever, that he was achy, had a headache and general malaise.

20. Mr. Vigil was evaluated by Natalie Vance, RN and also consulted with Christopher Mercer, P.A.

21. Mr. Vigil's vitals were recorded at BP 92/60, HR 83, RR 20, temperature 99.7-101.3 degrees and his O2 Saturation level was at 97%.

22. Mr. Vigil was transferred to New Mexico Central Correctional Facility on April 28, 2017.

23. On April 28, 2017, Mr. Vigil complained of daily headaches and reported blurred/double vision and hearing loss, weakness in his legs, tingling or numbness, and back pain.

24. At this time, Mr. Vigil had clear neurological symptoms along with the pre-existing neck pain and headaches.

25. Mr. Vigil was evaluated by a CNMCF Psychiatrist, instead of a medical doctor, and advised to continue current medications: Mirtazapine, Fluoxetine and Oxcarbazepine.

26. On May 1, 2017 and May 2, 2017, labs were drawn for Mr. Vigil.

27. On May 3, 2017 physical examination of Mr. Vigil noted no acute distress.

28. It was noted that Mr. Vigil was thin and frail and he had no neck mass or adenopathy, he had no tenderness to back and full mobility, extremities were within normal limits and also with full mobility.

29. It was noted that Mr. Vigil walked slowly with a stiff gait.

30. While in the custody of CNMCF, Mr. Vigil lost 15 pounds in one week.

31. On May 15, 2017, Mr. Vigil made a sick call request for stronger pain medications due to neck and back pain.

32. On May 15, 2017, Mr. Vigil was given three doses of Narcan.

33. Following the Narcan doses, Mr. Vigil went into cardiac arrest and was transferred to the University of New Mexico Hospital.

34. Mr. Vigil was diagnosed with a large epidural abscess that spanned the entire cervical spine resulting in critical spinal canal narrowing.

35. There was also a paravertebral abscess along the entire cervical spine that resulted in severe airway narrowing at the level of oropharynx and hypopharynx.

36. Mr. Vigil was treated at the University of New Mexico Hospital for multiple conditions which complicated his hospitalization, including: epidural abscess, paravertebral abscess, sepsis, septic emboli of the kidney, pneumonia and atelectasis of the lungs, flaccid paralysis and psoas abscess.

37. Mr. Vigil was started on NG tube for nutrition and tracheostomy to secure the

airways.

38. Mr. Vigil was treated with appropriate antibiotics for all the infections and transferred to Kindred Hospice on July 7, 2017.

39. Mr. Vigil was immunocompromised due to diabetes.

40. The risk of developing systemic infection in patients with drug abuse and a compromised immune system is high.

41. Any headache or neck pain with history of diabetes, epilepsy and neurological symptoms should be immediately evaluated for infection.

42. Mr. Vigil's wife and other family members report that Mr. Vigil complained that he had reported the growth on his neck, severe neck pain, and severe headaches numerous times to medical staff.

43. Following admission to CNMCF on April 28, 2017, there was little documentation of the patient's headache and neck pain symptoms, despite repeated complaints by Mr. Vigil.

44. Defendant Beaven failed to diagnose the abscess.

45. Defendant Beaven gave Mr. Vigil excessive doses of Narcan.

46. Narcan is contraindicated for patients with Mr. Vigil's medical history and symptoms at the time it was given.

**COUNT I**  
**MEDICAL MALPRACTICE AND NEGLIGENCE**  
**(All Defendants)**

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

48. In undertaking the diagnosis, care and treatment of David Vigil, Defendants have a duty to possess and apply the knowledge, skill, and care that is used by reasonably well-qualified

healthcare providers in the local community.

49. Defendants breached their duties and were grossly negligent and reckless in the management of Mr. Vigil's health and safety.

50. Defendants' negligence and recklessness include, but are not limited to:

- a. Failure to evaluate, treat and manage Mr. Vigil's abscess;
- b. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management Mr. Vigil's abscess;
- c. Failure to create an appropriate treatment plan;
- d. Failure to implement an appropriate treatment plan;
- e. Failure to take the reasonable steps to acquire proper treatment of Mr. Vigil;
- f. Failure to refer Mr. Vigil to appropriate specialists;
- g. Failure to timely transfer Mr. Vigil to an acute care facility, such as UNMH;
- h. Failure to protect and preserve the health of Mr. Vigil;
- i. Improper prescription of Narcan prior to transfer to UNMH; and
- j. Excessive dosing of Narcan.

51. Defendants' failure to assess, treat and manage Mr. Vigil's muscular dystrophy was reckless, wanton and in utter disregard for the safety and welfare of Mr. Vigil.

52. The negligent and reckless acts and omissions of Defendants were the direct and proximate cause of Mr. Vigil's wrongful death.

53. Plaintiff is entitled to compensatory damages for the negligent acts and omissions of Defendants.

54. Plaintiff is entitled to punitive damages against all Defendants for their reckless and wanton acts and omissions.

**COUNT II**  
**NEGLIGENT OPERATION OF A MEDICAL FACILITY**  
**(Centurion)**

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

56. Centurion is entrusted with the medical care of New Mexico inmates who have no other source of medical care.

57. Centurion's medical staff at CNMCF lacked sufficient expertise to assess, treat and manage Mr. Vigil's health conditions, including the abscesses.

58. Centurion was negligent in failing to properly refer Mr. Vigil to be seen by a physician who could effectively treat him.

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

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

61. Such conduct amounts to negligence in the treatment of Mr. Vigil.

62. The actions of Centurion were negligent, willful, wanton, and in gross and reckless disregard for Mr. Vigil's well-being.

63. As a result of the foregoing, Mr. Vigil suffered wrongful death, pain and suffering, and severe psychological and emotional distress for which Plaintiff is entitled to damages, including punitive damages.

**COUNT III**  
**NEGLIGENCE PER SE**  
**(All Defendants)**

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

65. Defendants are subject to the standards set forth by the American Correctional Association (ACA).

66. Defendants violated ACA standard 4-4350 which provides for a mandatory written treatment plan that is required for offenders requiring close medical supervision, including chronic and convalescent care.

67. Defendants violated ACA standard 4-4350 which requires that that mandatory written treatment plan include directions to health care and other personnel regarding their roles in the care and supervision of the patient, and is to be approved by the appropriate licensed physician.

68. Defendants violated ACA Standard 4-4348 requiring that offenders who need health care beyond the resources available in the facility as determined by the responsible physician, are transferred under appropriate security provisions to a facility where such care is on call or available 24 hours per day.

69. Defendants violated ACA Standard 4-4348 which specifically states that treatment of an offender's condition should not be limited to resources and services available within a facility.

70. Defendants violated ACA Mandatory Standard 4-4359 which further requires that with chronic conditions that the treatment plan address the monitoring of medications, laboratory



testing, the use of chronic care clinics, health record forms, and specialist consultation and review.

71. As a result of the foregoing violations of the ACA and Defendants' negligence per se, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT IV  
NEGLIGENT HIRING, TRAINING AND SUPERVISION  
(Centurion)**

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

73. Centurion had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of muscular dystrophy patients.

74. On information and belief, Centurion failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage Mr. Vigil's multiple medical conditions and including the emergent abscesses.

75. On information and belief, Centurion failed to properly train and supervise its employees, contractors, or agents in the use of Narcan with a patient with Mr. Vigil's medical history and contemporaneous emergent conditions.

76. Centurion is liable for damages caused by their employees and other agents while working within the scope of their employment under the doctrines of respondeat superior and agency, in an amount not presently determinable but to be proven at trial.

77. As a result of the foregoing, Mr. Vigil's wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT V**  
**RES IPSA LOQUITUR**  
**(All Defendants)**

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

79. The injuries and damages, suffered by Mr. Vigil were proximately caused by Defendants.

80. It was Defendants' responsibility to manage and control their medical staff and the care and treatment of Mr. Vigil.

81. The events causing the injuries and damages to Mr. Vigil were of a kind which would not ordinarily occur in the absence of negligence on the part of Defendants.

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

83. As a result of the foregoing, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT VI**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**(All Defendants)**

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

85. Defendants intentionally denied Mr. Vigil proper and necessary medical care for his emergent abscesses.

86. Defendants intentionally denied Mr. Vigil access to the appropriate specialists emergent abscesses.

87. The conduct of Defendants was extreme, outrageous and intentional.

88. Mr. Vigil suffered severe emotional distress as a result of the conduct of Defendants.

89. As a result of the foregoing, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT VII**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**(All Defendants)**

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

91. Defendants maliciously and intentionally denied Mr. Vigil access to proper and necessary medical care.

92. Defendants maliciously and intentionally denied Mr. Vigil access to proper and necessary specialist medical care.

93. Defendants maliciously and intentionally denied Mr. Vigil access to proper and necessary emergency medical care.

94. The conduct of Defendants was extreme, outrageous, reckless and intentional.

95. As a result of the foregoing, Mr. Vigil suffered severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT VIII**  
**PUNITIVE DAMAGES**  
**(All Defendants)**

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

97. The acts and omissions complained of in the causes of action stated above are egregious in reckless, wanton and total disregard to the rights of Mr. Vigil, 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 are appropriate.

**COUNT IX  
RESPONDEAT SUPERIOR AND AGENCY**

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

99. Centurion is responsible to Mr. Vigil under the doctrine of respondeat superior for the conduct of its employees and agents.

100. Centurion is responsible to Mr. Vigil under the doctrine of agency for the conduct of its employees and agents.

101. ACA Mandatory Standard 4-4381 makes this clear stating that the Health Authority arranges for the availability of health care services: the responsible clinician determines what services are needed; the official responsible for the facility provides the administrative support for making the services accessible to offenders.

**WHEREFORE**, Plaintiff requests judgment as follows:

- A. Compensatory damages in an amount to be determined by this Court as adequate for pain, suffering, and injuries to David Vigil;
- B. Costs incurred by Plaintiff, including pre-judgment and post-judgment interest;
- C. Compensatory damages in an as yet undetermined amount, jointly and severally against all Centurion and Dr. Beaven, including damages for severe emotional distress;

- D. Punitive damages in an as yet undetermined amount against Centurion and Dr. Beaven; and
- E. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

COLLINS & COLLINS, P.C.

/s/ *Parrish Collins*

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-and-

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