

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

ADRIAN CHACON,

Plaintiff,

v.

No. D-101-CV-2021-01850

CENTURION CORRECTIONAL HEALTHCARE  
OF NEW MEXICO, LLC; WEXFORD HEALTH  
SOURCES, INC.; STATE OF NEW MEXICO;  
NEW MEXICO CORRECTIONS DEPARTMENT;  
and JOHN DOES 1-20 in their individual and  
official capacities, (employees, staff, and agents of  
the State of New Mexico, New Mexico Corrections  
Department, Centurion Correctional Healthcare of  
New Mexico, LLC and Wexford Health Sources,  
Inc., respectively).

Defendants.

**FIRST AMENDED COMPLAINT FOR MEDICAL MALPRACTICE, VIOLATION OF  
THE NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13 AND RELATED  
CLAIMS**

COMES NOW, the Plaintiff, Adrian Chacon, by and through his attorneys, COLLINS &  
COLLINS, P.C. (Parrish Collins) and SANDOVAL FIRM (Richard A. Sandoval), and for Mr.  
Chacon's cause of action states as follows:

**I. PARTIES**

**A. PLAINTIFF**

1. Adrian Chacon ("Mr. Chacon") was at all times relevant to this complaint a New  
Mexico Corrections Department ("NMCD") inmate.

2. Mr. Chacon, at the time of the original incident as set forth below, was an  
inmate at the Penitentiary of New Mexico ("PNM"), a NMCD facility.

3. Mr. Chacon is currently residing at the Penitentiary of New Mexico (PNM).

***B. NEW MEXICO CORRECTIONS DEPARTMENT (NMCD)***

4. DEFENDANT NMCD and PNM are entities of the State of New Mexico.

5. PNM is operated by NMCD.

6. Lea County Correctional Facility (LCCF) is an entity of the State of New Mexico and is operated by NMCD.

7. Central New Mexico Correctional Facility (CNMCF) is an entity of the State of New Mexico and is operated by NMCD.

8. The Long-Term Care Unit (LTCU) is located at CNMCF and serves as a hospital of sorts for NMCD inmates.

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

10. NMCD is responsible for contracting of medical services for all NMCD facilities including PNM.

11. At all material times, NMCD and PNM 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.

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

13. NMCD governs PNM, while independent contractors carry out discrete duties at the discretion of NMCD.

**C. WEXFORD HEALTH SOURCES, INC. (*Wexford*)**

14. 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.

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

16. Wexford is neither a local public body nor a state employee under N.M. Stat. Ann. § 41-4-7(F) (West).

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

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

**II. JURISDICTION AND VENUE**

19. All acts complained of herein occurred in Santa Fe, New Mexico.

20. Numerous timely Tort Claims Notices were sent in an attempt to gain appropriate healthcare. Plaintiff’s Exhibit (hereinafter referred to as “PEX”), **PEX 1**.

21. Among the Tort Claims Notices were multiple Tort Claims Notices related to retaliation for seeking legal assistance, filing grievances and filing Tort Claims Notices which were met with further retaliation.

22. Mr. Chacon asserts that Mr. Chacon exhausted all available administrative remedies as required by 42 U.S.C.A. § 1997e (West) and N.M. Stat. Ann. § 33-2-11 (West 1978).

23. Jurisdiction and venue are proper over Centurion and its employees, staff and agents 1-10 pursuant to N.M. Stat. Ann. § 38-3-1 (A) (West).

24. 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.

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

26. This Court has jurisdiction over the subject matter of Mr. Chacon'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 N.M. Stat. Ann. § 41-4-18 (West) and N.M. Stat. Ann. § 38-3-1 (A).

27. Jurisdiction over all parties and claims are proper under N.M. Const. art. II, § 10, Article 4A New Mexico Civil Rights (§§ 41-4A-1 — 41-4A-13 and the law of negligence under New Mexico law.

### **III. STATEMENT OF FACTS**

#### **A. FACTS**

28. Mr. Chacon has a history of mental illness and severe infections associated with a broken arm (hereinafter collectively referred to as "Mr. Chacon's medical condition")

29. Mr. Chacon had a history of schizophrenia, bi-polar disorder, PTSD, and hallucinatory episodes related thereto.

30. NMCD and Wexford, by and through their employees, staff and agents, were well aware of Mr. Chacon's medical condition.

31. Mr. Chacon sustained multiple gunshot wounds on February 18, 2018 resulting in a severely broken arm requiring surgery and plates to be installed in his arm in 2019. **PEX 2.**

32. Due to severe medical neglect and disregard for infection risks, by Wexford and NMCD, acting through their respective employees, staff and agents, Mr. Chacon suffered numerous infections to his arm for which he was hospitalized several times and underwent several surgeries.

33. Due to the ongoing gross medical neglect and reckless disregard for his health and safety, Mr. Chacon sought legal counsel.

34. Under the instruction of counsel, Mr. Chacon filed a series of medical grievances in an attempt to gain proper medical attention and to fulfil his legal duties under N.M. Stat. Ann. § 33-2-11.

35. Counsel also submitted a series of Tort Claims Notices.

36. In retaliation for seeking legal assistance, filing grievances and submitting Tort Claims Notices, Mr. Chacon has suffered severe and ongoing retaliation to including physical assault, verbal assault, threats, emotional abuse, refusal of medical and mental health care by both Wexford and NMCD, loss of privileges, and unlawful and unwarranted segregation.

37. Mr. Chacon remained in segregation and the retaliation was ongoing as of the date of this Complaint.

38. Mr. Chacon has since been released from the custody of NMCD, but the retaliation is ongoing with NMCD refusing to provide Mr. Chacon documents necessary for medical care and disability insurance. NMCD is both legally responsible for insuring inmates upon release have social security and Medicaid cards which NMCD did in fact obtain on behalf of Mr. Chacon. However, NMCD has refused to provide these to Mr. Chacon telling him to get them on his own despite the fact that the documents are in the possession of NMCD.

39. The gross medical negligence and reckless disregard for Mr. Chacon's infection risks has caused severe and permanent harm to Mr. Chacon's arm.

40. The physical assaults have caused additional severe and permanent harm to Mr. Chacon's arm.

41. The physical assaults, verbal assaults, threats and emotional abuse caused extreme physical and emotional pain to Mr. Chacon.

42. The physical assaults, verbal assaults, threats and emotional abuse worsened and have intensified Mr. Chacon's mental health issues including severe and fully expectable PTSD.

43. The physical assaults, verbal assaults, threats and emotional abuse have served their purpose, with Mr. Chacon afraid to file medical grievances or any other grievances as is required under N.M. Stat. Ann. § 33-2-11.

44. The actions of Wexford and NMCD, acting by and through their employees, staff and agents, intentionally and with malice caused severe and permanent medical and physical harm to Mr. Chacon.

45. The actions of Wexford and NMCD, acting by and through their employees, staff and agents, intentionally and with malice caused severe physical, medical, emotional and psychological pain to Mr. Chacon.

***B. FACTS SPECIFIC TO NMCD DEFENDANTS***

46. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within PNM.

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

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

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

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

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

52. None of the NMCD Defendants interceded on behalf of Mr. Chacon to help him to obtain proper medical treatment for his arm and recurrent and severe infections.

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

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

55. NMCD routinely ignores medical grievances.

56. NMCD routinely destroys medical grievances.

57. NMCD routinely fails to process medical grievances correctly.

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

59. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at PNM, including those filed by Mr. Chacon.

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

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

62. NMCD routinely retaliates against inmates that file grievances, including medical grievances.

63. DEFENDANT STEVE MADRID, NMCD grievances officers, unit managers and wardens are instrumental in the denial of medical grievances.

64. NMCD grievances officers, disciplinary officers, unit managers and wardens are instrumental in retaliation for the filing of medical grievances, including the retaliation suffered by Mr. Chacon.

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

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

67. NMCD's medical grievance abuses create an unsafe environment at NMCD facilities including PNM under N.M. Stat. Ann. § 41-4-6 (West) and constitutes negligent operation of a medical facility under N.M. Stat. Ann. § 41-4-9 (West).

68. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Chacon's history of Mr. Chacon's medical condition and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances, ignored National Commission on Correctional Health Care ("NCCHC") and American Correctional Association (ACA) guidelines, ignored NMCD grievance policies, ignored the mandates of N.M. Stat. Ann. § 33-2-11 and generally failed to take action within its authority to protect the health of Mr. Chacon.

69. Instead, NMCD through its employees, staff and agents, intentionally and cruelly inflicted physical, emotional and psychological pain on Mr. Chacon through denial of, disregard of and retaliation for his medical grievances.



70. STEVE MADRID knew of Mr. Chacon's history of Mr. Chacon's medical condition and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances.

71. DEFENDANT WARDEN knew of Mr. Chacon's history of Mr. Chacon's medical condition and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances.

72. NMCD understands and recognizes that failure to treat Mr. Chacon's medical condition constitutes recklessness under New Mexico law.

73. NMCD understands and recognizes that failure to treat Mr. Chacon's medical condition constitutes deliberate indifference under federal law.

74. NMCD had full authority to enforce the PSC.

75. NMCD had at all times relevant to this COMPLAINT the authority to compel Wexford to treat Mr. Chacon's medical condition.

76. NMCD has obtained substantial budgets for treatment of Mr. Chacon's medical condition.

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

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

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

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

81. 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.

82. NMCD has the authority to terminate the PSC at as indicated by the terms of the PSC:

**7. Termination.**

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement. PSC, p. 3.

83. NMCD recklessly chose not to exercise any control over the manner in which its Wexford performed their duties leading to the Mr. Chacon's medical condition.

84. NMCD recklessly chose not to exercise any control over the manner in which its Wexford performed their duties leading to the Mr. Chacon's medical condition.

85. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Chacon's history of Mr. Chacon's medical condition and failed to provide necessary and proper medical care to protect Mr. Chacon's health and safety.

86. Many of the medical providers hired and retained by Wexford also worked for Centurion Correctional Healthcare, LLC whose contract with NMCD ended early in its first extension period.

87. Centurion had an abysmal record of medical care in NMCD facilities.

88. Upon information and belief, numerous Wexford medical providers worked under Corizon Health whose record of medical care was equally atrocious and whose contract also ended early.

89. Wexford has continued the employment of those medical providers despite the fact that they were the very reason for the abysmal care provided by Centurion and Corizon.

90. NMCD negligently failed to monitor or evaluate, or to require Wexford to reevaluate Wexford holdover medical providers from Centurion Correctional Healthcare, LLC and Corizon Health.

91. NMCD has engaged in grossly negligent and reckless contracting of unfit medical providers.

92. NMCD has negligently and recklessly failed to exert any supervision over its medical contractors, including Wexford.

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

93. 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.

94. Wexford TechProp was over 830 pages long.

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

96. Wexford TechProp did not mention the word “tort.”

97. Wexford TechProp did not mention punitive damages.

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

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

100. The PSC was 65 pages in length.

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

102. The PSC did not mention the word “tort.”

103. The PSC did not mention punitive damages.

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

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

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

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

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

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

110. Wexford was legally competent to enter the PSC.

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

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

113. The PSC was not vague.

114. The PSC was not oppressive to Wexford.

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

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

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

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

119. 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.

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

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

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

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

124. 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.

125. 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.

126. 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.

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

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

129. 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.

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

131. 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.

132. Wexford deliberately and cruelly denied and continues to deny Mr. Chacon proper medical care for arm refusing to send him to a specialist.

133. Wexford has engaged in negligent hiring, retention, training, and supervision of medical providers working under Wexford in NMCD facilities.

134. Many of the medical providers hired and retained by Wexford also worked for Centurion Correctional Healthcare, LLC whose contract with NMCD ended early in its first extension period.

135. Centurion had an abysmal record of medical care in NMCD facilities.

136. Upon information and belief, numerous Wexford medical providers worked under Corizon Health whose record of medical care was equally atrocious and whose contract also ended early.

137. Wexford has continued the employment of those medical providers despite the fact that they were the very reason for the abysmal care provided by Centurion and Corizon.

138. Wexford has clearly failed to train and supervise its employees, staff and agents as evidenced by the mounting lawsuits against Wexford for its medical services within NMCD.

139. Wexford deliberately and cruelly denied and continues to deny Mr. Chacon proper mental health services despite Mr. Chacon's pleas for help and his severe and potentially life-threatening mental health issues.

140. Wexford DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Chacon's history of Mr. Chacon's medical condition and failed to provide necessary and proper medical care to protect Mr. Chacon's health and safety.

141. As of the date of the filing of this Complaint, Mr. Chacon's arm remains in a non-union condition.

***D. FACTS COMMON TO ALL DEFENDANTS***

142. ALL DEFENDANTS knew of Mr. Chacon's history of Mr. Chacon's medical condition and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances and deliberately refused to provide necessary and proper medical care.

143. ALL DEFENDANTS collectively knew of Mr. Chacon's history of Mr. Chacon's medical condition and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances and deliberately refused to provide necessary and proper medical care.

144. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of Mr. Chacon's history of Mr. Chacon's medical condition and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances and deliberately refused to provide necessary and proper medical care.

145. ALL DEFENDANTS knew that Mr. Chacon was in need of immediate treatment to control Mr. Chacon's chronic Mr. Chacon's medical condition.

146. ALL DEFENDANTS knew that Mr. Chacon's chronic Mr. Chacon's medical condition was worsening.

147. ALL DEFENDANTS knew that the failure to treat chronic Mr. Chacon's medical condition constitutes recklessness under New Mexico law.

148. ALL DEFENDANTS knew that the failure to treat chronic Mr. Chacon's medical condition constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

149. ALL DEFENDANTS knew that the failure to treat chronic Mr. Chacon's medical condition constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

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

151. ALL DEFENDANTS conspired together to deny Mr. Chacon necessary and proper medical care leading to physical pain, severe emotional and psychological pain and suffering, and severe and permanent physical injuries from complications from Plaintiff's untreated and improperly treated chronic medical condition.



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

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

153. In undertaking the diagnosis, care and treatment of Mr. Chacon, DEFENDANT DOCTORS, 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.

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

155. 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. Chacon's medical condition;
- c. Failure to take the reasonable steps to acquire proper treatment of Mr. Chacon;
- d. Failure to refer Mr. Chacon to appropriate specialists;
- e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of Mr. Chacon's medical condition;
- f. Failure to provide Mr. Chacon with necessary and proper pain management; and
- g. Failure to protect and preserve the health of Mr. Chacon.

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

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

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

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

159. N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and NMSA §41-4-10.

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

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

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

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

164. 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 Mr. Chacon.

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

166. NMCD determined not to enforce the NCCHC standards.

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

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

169. NMCD allowed ACA accreditation for its facilities to lapse under the medical care of Centurion.

170. 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 Mr. Chacon.

171. 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.

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

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

174. 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.

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

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

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

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

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

179. N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and N.M. Stat. Ann. § 41-4-10.

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

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

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

183. Centurion's medical staff at PNM lacked sufficient expertise to assess, treat and manage Mr. Chacon's health conditions.

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

185. NMCD DEFENDANTS negligently failed to enforce critical terms of the GSC, including but not limited to, failure to compel PNM and/or Centurion to obtain accreditation by the ACA and NCCHC, which contributed to Mr. Chacon's injuries.

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

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

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

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

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

191. 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.

192. 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. Chacon's injuries.

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

194. 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. Chacon's injuries.

195. 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.

196. NMCD has a duty to operate CNMCF, GCCF and PNM in a safe and reasonably prudent manner.

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

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

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

200. 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.

201. As such, NMCD has negligently operated PNM, a public facility in which it incarcerated Mr. Chacon.

202. NMCD has created a risk to all inmates including Mr. Chacon at PNM, as all inmates are owed adequate healthcare.

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

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

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

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

206. 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.

207. Wexford employees, staff and agents were unqualified to care for Mr. Chacon, and yet refused to refer Mr. Chacon to specialists.

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

209. Wexford DEFENDANTS' actions and inactions in failing to properly assess, treat and manage Mr. Chacon's medical condition and related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of Mr. Chacon.

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

211. By failing to either: (1) properly treat Mr. Chacon's medical conditions, or (2) properly refer Mr. Chacon to be seen by a physician who could effectively treat Mr. Chacon,

Wexford DEFENDANTS breached their duty to medically treat Mr. Chacon in a reasonably prudent manner.

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

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

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

215. 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.

216. Wexford DEFENDANTS failed to properly address Mr. Chacon's medical condition.

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

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

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

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

221. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering Mr. Chacon's medical condition.

222. 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. Chacon's multiple medical conditions, including Mr. Chacon's medical condition and related health conditions.

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

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

225. As a result of the foregoing, Mr. Chacon 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.

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

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

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

228. N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and N.M. Stat. Ann. § 41-4-10.

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

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

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

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

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

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

235. Wexford's medical staff at PNM lacked sufficient expertise to assess, treat and manage Mr. Chacon's health conditions.

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

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

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

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

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

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

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

243. Such conduct amounts to negligence in running a medical facility.
244. Such conduct amounts to negligence in the treatment of Mr. Chacon.
245. The actions of NMCD were negligent, reckless, willful, wanton, and deliberately indifferent to the health of Mr. Chacon.
246. NMCD DEFENDANTS have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.
247. Centurion has violated numerous provisions of ACA and NCCHC.
248. NMCD DEFENDANTS have taken no action to correct these violations or otherwise hold Centurion to ACA, NCCHC or New Mexico medical standards of care.
249. 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.
250. NMCD DEFENDANTS have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.
251. NMCD DEFENDANTS have failed to properly maintain oversight and enforcement of the GSC.
252. 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.

253. 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.

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

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

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

257. 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.

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

259. The failures of NMCD DEFENDANTS led to serious and permanent harm to Mr. Chacon.

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

**COUNT VI: GROSS MEDICAL NEGLIGENCE AND RECKLESSNESS DISREGARD  
FOR PLAINTIFF’S MEDICAL CONDITION UNDER THE NEW MEXICO CIVIL  
RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(ALL DEFENDANTS)**

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

262. The acts and omissions set forth above illustrate gross negligence and reckless disregard for Mr. Chacon’s medical conditions.

263. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

264. Mr. Chacon is entitled to recovery for Mr. Chacon’s injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress under the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13.

265. Mr. Chacon is entitled to punitive damages against NMCD and Wexford under the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13.

**COUNT VII: NEGLIGENT HIRING, TRAINING AND SUPERVISION UNDER THE  
NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(WEXFORD)**

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

267. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering Mr. Chacon’s medical condition.

268. 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. Chacon’s medical condition.

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

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

271. Wexford have not established any standards for medical care.

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

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

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

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

276. Wexford had a duty to allow Mr. Chacon's medical providers to make referrals to specialist.

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

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

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

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

281. 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.

282. The acts and omissions of Wexford set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18

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

284. Mr. Chacon is entitled to punitive damages against Wexford.

285. Waivers of immunity apply to this Count under N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and N.M. Stat. Ann. § 41-4-10.

**COUNT VIII: NEGLIGENT HIRING, TRAINING AND SUPERVISION UNDER THE  
NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(NMCD DEFENDANTS)**

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

287. N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and N.M. Stat. Ann. § 41-4-10.

288. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of Mr. Chacon's medical condition.

289. 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. Chacon's medical condition and related health conditions.

290. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of Mr. Chacon's medical condition.

291. Waivers of immunity apply to this Count under N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and N.M. Stat. Ann. § 41-4-10

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

293. NMCD failed to enforce the GSC.

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

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

296. The acts and omissions of NMCD set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18

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

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

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



**COUNT IX: NEGLIGENT AND RECKLESS MEDICAL CONTRACTING UNDER THE  
NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(NMCD)**

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

301. Many of the medical providers hired and retained by Wexford also worked for Centurion Correctional Healthcare, LLC whose contract with NMCD ended early in its first extension period.

302. Centurion had an abysmal record of medical care in NMCD facilities.

303. Upon information and belief, numerous Wexford medical providers worked under Corizon Health whose record of medical care was equally atrocious and whose contract also ended early.

304. Wexford has continued the employment of those medical providers despite the fact that they were the very reason for the abysmal care provided by Centurion and Corizon.

305. NMCD negligently failed to monitor or evaluate, or to require Wexford to reevaluate Wexford holdover medical providers from Centurion Correctional Healthcare, LLC and Corizon Health.

306. NMCD has engaged in grossly negligent and reckless contracting of unfit medical providers.

307. There is no waiver under the NMCRA for grossly negligent and reckless medical contracting.

308. NMCD has negligently and recklessly failed to exert any supervision over its medical contractors, including Wexford.

309. The acts and omissions of NMCD set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

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

**COUNT X: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UNDER THE  
NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(ALL DEFENDANTS)**

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

312. Wexford DEFENDANTS intentionally denied Mr. Chacon proper and necessary medical care for Mr. Chacon's medical condition.

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

314. Wexford DEFENDANTS retaliated against Mr. Chacon by taking away Mr. Chacon's admission in the Echo Project for treatment of Mr. Chacon's medical condition knowing Mr. Chacon's medical condition was worsening Mr. Chacon's health conditions, because of a disciplinary action.

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

316. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

317. Mr. Chacon suffered severe emotional distress as a result of the conduct of DEFENDANTS.

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

**COUNT XI: CIVIL CONSPIRACY TO DENY PLAINTIFF'S CIVIL RIGHTS UNDER  
THE NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(ALL DEFENDANTS)**

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

320. The facts illustrated above show a conspiracy on the part of ALL DEFENDANTS to deny Mr. Chacon necessary, proper and constitutionally minimal medical care.

321. As a result of said conspiracy, Mr. Chacon suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of ALL DEFENDANTS.

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

323. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

324. PLAINTIFF is entitled to damages, including punitive damages, against ALL DEFENDANTS UNDER the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13.

325. Mr. Chacon is entitled to punitive damages against Wexford DEFENDANTS.

**COUNT XII: RESPONDEAT SUPERIOR AND AGENCY UNDER THE NEW MEXICO  
CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(WEXFORD)**

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

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

328. Wexford are responsible to Mr. Chacon under the doctrine of agency for the conduct of its employees, staff and agents.

329. Mr. Chacon takes the position that Wexford is not protected under the Tort Claims Act for respondeat superior.

330. Wexford is not protected from respondeat superior and agency under the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13.

331. The acts and omissions of Wexford set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

**COUNT XIII: RESPONDEAT SUPERIOR AND AGENCY UNDER THE NEW MEXICO  
CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(NMCD)**

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

333. N.M. Stat. Ann. § 41-4-6, N.M. Stat. Ann. § 41-4-9 and N.M. Stat. Ann. § 41-4-10.

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

335. NMCD is responsible to Mr. Chacon under the doctrine of agency for the conduct of its employees, staff and agents.

336. There is no immunity for NMCD, its employees, staff and agents, for Respondeat Superior and Agency under the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13.

337. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

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

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

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

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

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

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

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

344. Mr. Chacon is entitled to punitive damages against Wexford DEFENDANTS.

**COUNT XV: CIVIL CONSPIRACY TO DENY Mr. Chacon MEDICAL CARE UNDER  
THE NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(ALL DEFENDANTS)**

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

346. ALL DEFENDANTS conspired to cause Mr. Chacon deny Mr. Chacon necessary medical care.

347. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

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

349. Mr. Chacon is entitled to punitive damages against ALL DEFENDANTS.

**COUNT XVI: CIVIL CONSPIRACY TO CAUSE Mr. Chacon EMOTIONAL AND  
PHYSICAL PAIN UNDER THE NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-  
4A-13  
(ALL DEFENDANTS)**

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

351. ALL DEFENDANTS conspired to cause Mr. Chacon severe physical, emotional and psychological pain.

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

353. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

354. Mr. Chacon is entitled to punitive damages against ALL DEFENDANTS.

**COUNT XVII: INTERFERENCE WITH PLAINTIFF'S RIGHT TO ACCESS TO THE COURTS IN VIOLATION OF THE NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13 (NMCD)**

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

356. NMCD, by and through its employees, staff and agents, engaged in a campaign of retaliation against Mr. Chacon in retaliation for the exercise of Mr. Chacon's legal rights and duties under 42 U.S.C.A. § 1997e (West) and N.M. Stat. Ann. § 33-2-11 (West 1978).

357. Said retaliation by NMCD, acting by and through its employees, staff and agents, was for the purpose of intimidation of Mr. Chacon to deter his lawful use of the medical grievance system.

358. Said retaliation by NMCD, acting by and through its employees, staff and agents, was for the purpose of intimidation of Mr. Chacon to did result in further denial of critical medical care for severe and extremely painful injuries.

359. Said retaliation by NMCD, acting by and through its employees, staff and agents, was for the purpose of denying Mr. Chacon access to the courts.

360. Said retaliation by NMCD, acting by and through its employees, staff and agents, caused additional extreme medical and psychological harm to Mr. Chacon.

361. Said retaliation by NMCD, acting by and through its employees, staff and agents, caused additional extreme medical and psychological harm to Mr. Chacon.

362. The retaliation is ongoing despite the fact that Mr. Chacon has been released from the custody of NMCD.

363. The acts and omissions of ALL DEFENDANTS set forth above are violative of N.M. Stat. Ann. Ch. 41, Art. 4A, N.M. Const. Art. II, § 4, N.M. Const. Art. II, § 13, N.M. Const. Art. II, § 18.

**COUNT XVIII: PUNITIVE DAMAGES UNDER  
THE NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13  
(ALL DEFENDANTS)**

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

365. 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, safety and civil rights of Mr. Chacon, 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**, Mr. Chacon requests judgment as follows:

A. All damages allowable under the New Mexico Tort Claims Act, the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13 or at common law against NMCD and Wexford to include compensatory damages and punitive damages.

B. All damages to be awarded against NMCD and Wexford to be joint and several damages.

C. Punitive damages in an undetermined amount against NMCD and Wexford;



D. Attorney fees and costs incurred by Mr. Chacon, including pre-judgment and post-judgment interest as allowed under the NEW MEXICO CIVIL RIGHTS ACT, §§ 41-4A-1 — 41-4A-13; 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

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Albuquerque, NM 87103

505-242-5958

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-and-

SANDOVAL FIRM

/s/ *Richard A. Sandoval*

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October 5, 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***

Robin Bourne, Warden  
CNMCF  
P.O. Box 1328  
Los Lunas, New Mexico 87031-1328  
***Via USPS only***

Re:    **Subject:**           Adrian Chacon (NMCD 87094)  
          **Date of Incident:**   August 6, 2020 and on-going  
          **Location:**       Central New Mexico Correctional Facility (CNMCF)  
          **Violations of Law:**   Failure to treat Hepatitis C (HCV) & 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. Adrian Chacon for injuries to his arm and related conditions.

**Facts**

Mr. Adrian Chacon had sustained a gunshot wound to his arm prior to his incarceration and plates were installed during a surgical procedure in 2018. At some point during late June and early July, the plate in Mr. Chacon's arm broke. He made repeated requests for medical attention. However, he was not taken in for surgery until August 6, 2020 at Lea Regional Medical Center. After the procedure, he was taken back to the correctional facility within an

October 5, 2020

Page 2

hour. An infection developed and he had to be taken back to the hospital on August 13, 2020. On August 18, 2020 he had to be taken yet again to the hospital, on this occasion to the University of New Mexico Hospital in Albuquerque and he reports having had three additional surgical interventions over the course of the following week. On discharge from UNMH he was taken to the Long-Term Care Unit at the Central New Mexico Correctional Facility (CNMCF). The lack of proper medical attention constitutes deliberate indifference to the medical needs of Mr. Chacon.

**Preservation of Evidence:**

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Mr. Chacon 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. Chacon 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. Chacon.
3. His complete, unredacted inmate file including all disciplinary records and a full location history.
4. All recorded phone calls to which Mr. Chacon 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

**COLLINS & COLLINS, P.C.**  
Attorneys at Law  
P. O. Box 506  
Albuquerque, NM 87103  
Telephone: (505) 242-5958 Fax (505) 242-5968

March 18, 2021

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*

Robin Bourne, Warden  
CNMCF  
P.O. Box 1328  
Los Lunas, NM 87031-1328  
*Via USPS only*

Re:   **Subject:**           Adrian Chacon (NMCD 87094)  
      **Date of Incident:**   March 18, 2021 and on-going  
      **Location:**        Central New Mexico Correctional Facility (CNMCF)  
      **Violations of Law:** Failure to treat infection & 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. Adrian Chacon for injuries to his arm and related conditions.

**Facts**

Adrian Chacon has an ongoing infection in his arm that has persisted due to the actions and inactions of both NMCD and Wexford Health Sources. He was taken to UNMH for surgery where the infection was addressed, and his arm was repaired to the degree possible. He reports that he has been placed in segregation in retaliation for seeking legal assistance. He further reports that he has been denied grievance forms and was told that there were no appeal forms. Mr. Chacon has filed numerous grievances for his ongoing arm infection, failure to

protect him from COVID-19 which he suffered along with pneumonia which almost took his life, and he has grieved the fact that his grievances are ignored. These are all matters that are actionable under the Tort Claims Act and we continue to investigate his claims.

Mr. Chacon also reports that he suffers severe mental health issues including Schizophrenia, Bipolar Disorder and PTSD. He states that he has not been allowed access to mental health professionals. He indicates that he has severe episodes where he hallucinates, seeing and talking to people that are not there, and that he has emotional outbursts related to his mental health for which he is punished. Upon requesting mental health assistance, he reported that a correctional officer told him there was nobody available to help him and if he wanted help, he should attempt suicide.

Mr. Chacon also reports that he was allowed to call from room 201 which he described as an isolation room. He further indicated that the door was closed and that it did not appear that anyone was monitoring the call. This is progress over prior issues with the privacy of calls with our clients. However, both Mr. Chacon and I heard repeated clicking on the phone which can be indicative of a call being monitored and/or recorded. Please preserve any recordings of the call between our office and any inmate from room 201 or otherwise for the last 6 months.

If true, the above behavior of NMCD, Wexford and their respective employees, staff and agents constitute deliberate indifference to the medical needs of Mr. Chacon and are clearly violative of Mr. Chacon's constitutional rights under both federal and New Mexico law.

**Preservation of Evidence:**

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Mr. Chacon 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. Chacon 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. Chacon.
3. His complete, unredacted inmate file including all disciplinary records and a full location history.
4. All recorded phone calls to which Mr. Chacon was a party from October 18, 2020 to the present.

March 18, 2021  
Adrian Chacon  
Page 3

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

NEW MEXICO CORRECTIONS DEPARTMENT

INMATE INFORMAL COMPLAINT

Inmate Name: Adrian Chacon NMCD#: (NMCD 70426)  
Facility: CNMCF HU/Cell # LTCU Date of Incident: March 18, 2021 and on-going

Mr. Chacon also reports that he suffers severe mental health issues including schizophrenia, bi-polar and PTSD. He states that he has not been allowed access to mental health professionals. He indicates that he severe episodes where he hallucinates, seeing and talking to people that are not there and that he has emotional outbursts related to his mental health for which he punished. He states that he was told by a correctional officer to attempt suicide if he needed psychiatric care. He has made requests to Wexford Health Sources Staff, Unit Manager, Grievance Officer and Correctional Officers working within the LTCU. He is requesting financial compensation in the amount of \$20,000,000 to resolve this matter.

Constituent Signature: /s/Parrish Collins Date: March 18, 2021

**Unit Manager/Chief of Security/Designee**

Date Received: \_\_\_\_\_

I, \_\_\_\_\_ have reviewed the above informal complaint and  
Unit Manager/Chief of Security/Designee

Recommend: ( ) Resolution ( ) Recommend formal grievance

Explain: \_\_\_\_\_

Staff Member: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

Acknowledged by the signatures below, this informal complaint is: ☒ Resolved | ☐ Unresolved

Unit Mgr/Chief of Security/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

Inmate: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

**If this informal complaint could not be resolved, the inmate may pursue a formal grievance within 5 working days of the date of resolution.**

**At time of resolution-the inmate must be given a copy of the completed copy of the Informal Complaint**

**Inmate must attach this document if the formal grievance is to be submitted.**

NEW MEXICO CORRECTIONS DEPARTMENT

INMATE INFORMAL COMPLAINT

Inmate Name: Adrian Chacon NMCD#: (NMCD 70426)  
Facility: CNMCF HU/Cell # LTCU Date of Incident: March 18, 2021 and on-going

Adrian Chacon has an ongoing infection in his arm that has persisted due to the actions and inactions of both NMCD and Wexford, and their staff. He was taken to UNMH for surgery where the infection was addressed, and his arm was repaired to the degree possible. He reports that he has been placed in segregation in retaliation for seeking legal assistance. He reports that he has been denied grievance forms and was told that there were no appeals forms. He has filed numerous grievances for his ongoing arm infection, failure to protect him from COVID-19 which he suffered along with pneumonia which almost took his life, and he has grieved the fact that his grievances are ignored. He has made repeated requests for appropriate care for his arm infection to Wexford staff, grievance and correctional officers, as well as, the Unit Manager. Mr. Chacon requests compensation in the amount of \$20,000,000 to resolve this matter.

Constituent Signature: /s/Parrish Collins Date: March 18, 2021

**Unit Manager/Chief of Security/Designee**

Date Received: \_\_\_\_\_

I, \_\_\_\_\_ have reviewed the above informal complaint and  
Unit Manager/Chief of Security/Designee

Recommend: ( ) Resolution ( ) Recommend formal grievance

Explain: \_\_\_\_\_

Staff Member: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

Acknowledged by the signatures below, this informal complaint is: ☒ **Resolved** | ☐ **Unresolved**

Unit Mgr/Chief of Security/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

Inmate: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

**If this informal complaint could not be resolved, the inmate may pursue a formal grievance within 5 working days of the date of resolution.**

**At time of resolution-the inmate must be given a copy of the completed copy of the Informal Complaint**

**Inmate must attach this document if the formal grievance is to be submitted.**



**COLLINS & COLLINS, P.C.**

Attorneys at Law  
P. O. Box 506  
Albuquerque, NM 87103  
Telephone: (505) 242-5958 Fax (505) 242-5968

March 18, 2021

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***

Robin Bourne, Warden  
CNMCF  
P.O. Box 1328  
Los Lunas, NM 87031-1328  
***Via USPS only***

Re:    **Subject:**           Adrian Chacon (NMCD 87094)  
      **Date of Incident:**   March 18, 2021 and on-going  
      **Location:**         Central New Mexico Correctional Facility (CNMCF)  
      **Violations of Law:**   Failure to treat infection & 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. Adrian Chacon for injuries to his arm and related conditions.

**Facts**

Adrian Chacon has an ongoing infection in his arm that has persisted due to the actions and inactions of both NMCD and Wexford Health Sources. He was taken to UNMH for surgery where the infection was addressed, and his arm was repaired to the degree possible. He reports that he has been placed in segregation in retaliation for seeking legal assistance. He further reports that he has been denied grievance forms and was told that there were no appeal forms. Mr. Chacon has filed numerous grievances for his ongoing arm infection, failure to

protect him from COVID-19 which he suffered along with pneumonia which almost took his life, and he has grieved the fact that his grievances are ignored. These are all matters that are actionable under the Tort Claims Act and we continue to investigate his claims.

Mr. Chacon also reports that he suffers severe mental health issues including Schizophrenia, Bipolar Disorder and PTSD. He states that he has not been allowed access to mental health professionals. He indicates that he has severe episodes where he hallucinates, seeing and talking to people that are not there, and that he has emotional outbursts related to his mental health for which he is punished. Upon requesting mental health assistance, he reported that a correctional officer told him there was nobody available to help him and if he wanted help, he should attempt suicide.

Mr. Chacon also reports that he was allowed to call from room 201 which he described as an isolation room. He further indicated that the door was closed and that it did not appear that anyone was monitoring the call. This is progress over prior issues with the privacy of calls with our clients. However, both Mr. Chacon and I heard repeated clicking on the phone which can be indicative of a call being monitored and/or recorded. Please preserve any recordings of the call between our office and any inmate from room 201 or otherwise for the last 6 months.

If true, the above behavior of NMCD, Wexford and their respective employees, staff and agents constitute deliberate indifference to the medical needs of Mr. Chacon and are clearly violative of Mr. Chacon's constitutional rights under both federal and New Mexico law.

#### **Preservation of Evidence:**

Under sanction of spoliation of evidence, please preserve all documents and communications related to the medical care of Mr. Chacon 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. Chacon 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. Chacon.
3. His complete, unredacted inmate file including all disciplinary records and a full location history.
4. All recorded phone calls to which Mr. Chacon was a party from October 18, 2020 to the present.

March 18, 2021  
Adrian Chacon  
Page 3

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

**COLLINS & COLLINS, P.C.**

Attorneys at Law  
P. O. Box 506  
Albuquerque, NM 87103  
Telephone: (505) 242-5958 Fax (505) 242-5968

May 25, 2021

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*

Leon Martinez, Warden  
PNM  
P.O. Box 1059  
Santa Fe, New Mexico 87504-1059  
*By USPS only*

Re: **Subject:** Adrian Chacon (NMCD 87094)  
**Date of Incident:** May 20, 2021  
**Location:** Penitentiary of New Mexico  
**Violations of Law:** Injuries sustained in altercation

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. Adrian Chacon for injuries sustained in an altercation with another inmate and subsequent actions of correctional officers.

**Facts**

Mr. Adrian Chacon reports that he had an altercation with another inmate and subsequent injuries he sustained in interaction with correctional officers who interceded following the altercation. He reports that he was located in the 2BM-Pod, known as the “drop-out Pod” due to the Pod being dedicated to those inmates who are seeking to exit gang involvement. He was improperly placed in close proximity to another inmate, Mak Little, also a known member of the Nortenos gang like Mr. Chacon. An altercation ensued. Mr. Chacon further reports that

following the altercation correctional officers threw him to the floor and handcuffed him. Mr. Chacon protested to the interceding officers that he was both allergic to mace, with which he was sprayed, and that he had recently had a fractured arm. The restraint exercised upon Mr. Chacon caused his arm to fracture anew. The placement of Mr. Chacon in a cell next to a known enemy, the excessive use of force in response to the fully predictable attack violates state and federal law. The refusal to provide proper medical care after the event constitutes deliberate indifference to the medical needs of Mr. Chacon insofar as he will not be taken in for radiologic studies until May 26, 2021 despite repeated requests for proper medical attention.

**Preservation of Evidence:**

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

1. Any and all log files for the duration of Mr. Chacon's incarceration at PNM.
2. The full and complete inmate file for Mr. Chacon.
3. All booking and intake documents for Mr. Chacon.
4. All medical records obtained or otherwise received for Mr. Chacon.
5. All requests by NMCD, its staff, agents, or contractors, for Mr. Chacon's medical records from any outside medical providers.
6. All correctional officer daily logs for the duration of Mr. Chacon's incarceration in NMCD facilities.
7. All other video and audio recordings related to the subject INCIDENT to include:
  - i. Video from the cell where he was incarcerated for the 72-hour period prior to the aforementioned altercation.
  - ii. All video footage from the hallways leading to and from his cell for a period of 72 hours prior to the altercation referenced.
  - iii. Videos of any physical location transfers to other areas of the detention facility.
  - iv. If in segregation, all video footage on his segregation cell and hallways leading to and from his segregation cell for the 72 hours prior to the altercation mentioned above.
8. All recorded calls involving Mr. Chacon as a party to the call.

9. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
  - a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
  - b. "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
  - c. "photograph" means a photographic image or its equivalent stored in any form.
10. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic records must be maintained and preserved even if there are hard copy printouts of said records.
11. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with Mr. Chacon.

Please also preserve all of the items listed in #1 and #2 above in the original electronic format in which they are entered, created, stored, maintained and archived. Thank you for your consideration of this matter.

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

NEW MEXICO CORRECTIONS DEPARTMENT

INMATE INFORMAL COMPLAINT

Inmate Name: Adrian Chacon NMCD#: (NMCD 70426)  
Facility: PNM HU/Cell # 2BM Pod Date of Incident: May 20 2021 and on-going

Mr. Adrian Chacon reports that he had an altercation with another inmate and subsequent injuries he sustained in interaction with correctional officers who interceded following the altercation. He reports that he was located in the 2BM-Pod, known as the "drop-out Pod" due to the Pod being dedicated to those inmates who are seeking to exit gang involvement. He was improperly placed in close proximity to another inmate, Mak Little, also a known member of the Nortenos gang like Mr. Chacon. An altercation ensued. Mr. Chacon further reports that following the altercation correctional officers through him to the floor and handcuffed him. Mr. Chacon protested to the interceding officers that he was both allergic to mace, with which he was sprayed, and that he had recently had a fractured arm. The restraint exercised upon Mr. Chacon caused his arm to fracture anew. He needs to be taken in for immediate medical attention and he is requesting \$20 million in compensation for his injuries and the damages he has sustained.

Constituent Signature: /s/Parrish Collins Date: May 25, 2021

**Unit Manager/Chief of Security/Designee**

Date Received: \_\_\_\_\_

I, \_\_\_\_\_ have reviewed the above informal complaint and  
Unit Manager/Chief of Security/Designee

Recommend: ( ) Resolution ( ) Recommend formal grievance

Explain: \_\_\_\_\_

Staff Member: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

Acknowledged by the signatures below, this informal complaint is: ☒ Resolved ☐ Unresolved

Unit Mgr/Chief of Security/Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

Inmate: \_\_\_\_\_ / \_\_\_\_\_ Date: \_\_\_\_\_  
Print / Sign

**If this informal complaint could not be resolved, the inmate may pursue a formal grievance within 5 working days of the date of resolution.**

**At time of resolution-the inmate must be given a copy of the completed copy of the Informal Complaint**

**Inmate must attach this document if the formal grievance is to be submitted.**

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

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

Sent: Tuesday, May 25, 2021 4:56 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 016739

Result: OK

End Time: Tue 25 May 2021 16:55:38

File Name: 5.25.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

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

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

Sent: Tuesday, May 25, 2021 4:54 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 016738

Result: OK

End Time: Tue 25 May 2021 16:54:19

File Name: 5.25.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058272969

Thanks,

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

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

Sent: Tuesday, May 25, 2021 4:53 PM



To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 016737

Result: OK

End Time: Tue 25 May 2021 16:52:30

File Name: 5.25.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

**COLLINS & COLLINS, P.C.**

Attorneys at Law

P. O. Box 506

Albuquerque, NM 87103

Telephone: (505) 242-5958 Fax (505) 242-5968

July 1, 2021

**NOTICE OF TORT CLAIM**

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

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***

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

Leon Martinez, Warden  
PNM  
P.O. Box 1059  
Santa Fe, New Mexico 87504-1059  
***By USPS only***

Re: **Subject:** Adrian Chacon (NMCD 87094)  
**Date of Incident:** June 17, 2021  
**Location:** Penitentiary of New Mexico (PNM)  
**Violations of Law:** Excessive force by officers, injuries sustained.

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 Penitentiary of New Mexico (PNM), its employees, staff contractors and other agents in their failure to treat Mr. Adrian Chacon for injuries sustained in an altercation with another inmate and subsequent actions of correctional officers.

We are in receipt of very troubling information from our client at the Penitentiary of New Mexico (PNM):

**Facts:**

Mr. Chacon reports that on June 17, 2021, he and 10 (ten) other inmates had asked to speak to the Unit Supervisor of 2A I-Pod. The reasons for said request were that none of the inmates were receiving proper and timely response to informal complaints that they had filed and that the toilets had backed up leaving human waste in hallways. Some of the human waste had been collected and dumped into a trash bin and left for more than a day. In response to the inmates' request to speak to a supervisor, Mr. Chacon reports that they sent in the riot squad, which was comprised of 26 officers.

When the 26 officers made entry into 2A I-Pod, there were a total of 12 (twelve) inmates in the Unit but two of them were then in segregation, leaving only the 10 inmates mentioned above in the open area during tier time. Officers entered with stun shotguns, batons and tear gas and ordered everyone to the ground. Only one of the inmates, not MR. Chacon, fought back against the officers. Mr. Chacon reports that the officers began beating some of the prostrate inmates, including him. Officers Omar Pryziowski and Antonio Ortiz beat and kicked Mr. Chacon, with Officer Ortiz commenting "*Fie a Tort Claims Notice on that, you little bitch!*" Officer Ortiz had previously told Mr. Chacon, when he requested to see a mental health provider, that he should just kill himself. Mr. Chacon notes that he filed an informal complaint on this incident previously and that this explains Officer Ortiz's violent actions against him.

Mr. Adrian Chacon reports that during the beating by officers he suffered additional injury to his arm and that his hernia was also gravely exacerbated. He reports that he now has a soft-ball size distension protruding several inches from his stomach. Mr. Chacon further reports that he was subsequently charged with inciting a riot, a very serious charge. He was placed in segregation immediately after the incident and he has also had all privileges taken from him.

In addition to the obvious violations of state and federal law evidenced by the facts set forth above, the actions of the guards were in retaliation for Mr. Chacon exercising his right to counsel under the 1<sup>st</sup> Amendment. Any additional punishment, forfeitures of good time, segregation or any other adverse consequences resulting from the retaliatory behavior of the guards will likewise be violative of state and federal law.

**Preservation of Evidence:**

Under sanction of spoliation of evidence, please preserve all documents and communications related to Mr. Adrian Chacon:

1. The full and complete inmate file for Mr. Adrian Chacon.
2. All medical records obtained or otherwise received for Mr. Chacon.

Adrian Chacon  
Tort Claims Notice  
July 1, 2021

3. All requests by PNM, its staff, agents, or contractors, for Mr. Chacon's medical records from any outside medical providers.
4. All correctional officer daily logs for the duration of Mr. Chacon's incarceration at PNM for the period June 16, 2021, to the present.
5. All cell check logs for checks on Mr. Chacon for the period June 16, 2021, to the present.
6. All other video and audio recordings related to the subject INCIDENT to include:
  - i. Video from the cell where he was incarcerated for the 72-hour period prior to the INCIDENT that occurred on June 17, 2021.
  - ii. All video footage from the hallways leading to and from his cell for a period of 72 hours prior to the INCIDENT on June 17, 2021.
  - iii. All video footage of 2A I-Pod for two hours prior to the INCIDENT and for two hours after the INCIDENT on June 17, 2021.
7. All recorded calls involving Mr. Chacon as a party to the call.
8. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
  - a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
  - b. "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
  - c. "photograph" means a photographic image or its equivalent stored in any form.
9. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic records must be maintained and preserved even if there are hard copy printouts of said records.
10. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with Mr. Chacon.

Please also preserve all 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,

Adrian Chacon  
Tort Claims Notice  
July 1, 2021

COLLINS & COLLINS, P.C.

*/s/Parrish Collins*

Parrish Collins  
PC/gtg

cc: Kevin Quigley, Hearing Officer

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

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

Sent: Thursday, July 1, 2021 5:01 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 017305

Result: OK

End Time: Thu 01 Jul 2021 17:01:01

File Name: 7.1.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058272969

Thanks,

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

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

Sent: Thursday, July 1, 2021 4:57 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 017304

Result: OK

End Time: Thu 01 Jul 2021 16:57:27

File Name: 7.1.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

**COLLINS & COLLINS, P.C.**

Attorneys at Law

P. O. Box 506

Albuquerque, NM 87103

Telephone: (505) 242-5958 Fax (505) 242-5968

August 13, 2021

**NOTICE OF TORT CLAIM**

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

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***

Wexford Health Sources, Inc.  
c/o Risk Management Department  
501 Holiday Drive, Suite 300  
Pittsburgh, PA 15220  
***Via Fax only to (412)-937-8874***

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

Leon Martinez, Warden  
PNM  
P.O. Box 1059  
Santa Fe, New Mexico 87504-1059  
***Via Fax only to (505)-827-8283***

Governor Michelle Lujan-Grisham  
490 Old Santa Fe Trail Room 400  
Santa Fe, NM 8750  
***Via Fax only to (505)-476-2226***

Re: **Subject:** Adrian Chacon (NMCD 87094)  
**Date of Incident:** August 4, 2021, and on-going  
**Location:** Penitentiary of New Mexico (PNM)  
**Violations of Law:** Excessive force by officers, injuries sustained.

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 Penitentiary of New Mexico (PNM), its employees, staff contractors and other agents Wexford Health Sources, Inc., and the State of New Mexico (and their employees, staff contractors and other agents) for the reckless, grossly indifferent disregard for the civil rights and safety of Adrian Chacon outlined below.

**Facts:**

Attorney Parrish Collins visited Mr. Chacon on August 3, 2021. Parrish Collins directed Mr. Chacon to file a medical grievance to get medical attention and a referral to an orthopedic specialist for his non-healing broken arm. Mr. Chacon, per instruction from his attorney and pursuant exhaustion of administrative remedies requirements did file the medical grievance. On August 4, 2021, Mr. Chacon was taken to medical in full restraints. Upon arrival to medical, he was placed in an observation cell or room. He was fully shackled. The guards told him he needed to cuff up, despite the fact that he was shackled and despite the medical slips on his cell door outlining his severely broken arm and the need for belly chains only. Mr. Chacon complied with the orders to the best of his physical ability in consideration of his broken arm. The guards then sprayed in him in the face with Phase 4 OC gas. Then demanded that he walk to the door unaccompanied despite his protests that he could not see. He tried to walk to the door but tripped hurting his broken arm further and hitting his head. The guards then sprayed him again in the face. They instructed him to lie on the ground which he did. Multiple guards then threw a riot shield on top of him and jumped on top of him. Four of the guards then picked him up by all four limbs carrying him very roughly to nowhere in particular. They were laughing at him as he cried in pain telling them they were hurting his arm. They threw him down on the floor again and then picked him up again by all fours. During the encounter, Deputy Warden Sisneros arrived at medical and upon seeing the guards abuse told them to all step away.

The actions of the guard and the medical staff were in clear retaliation for filing the medical grievance that is required by law for exhaustion of administrative remedies. The guards deliberately and maliciously caused Mr. Chacon severe pain and further injury to his arm, in addition to a head injury. The actions of the guards and medical personnel are in violation of state and federal law, including the New Mexico Civil Rights Act (NMCRA).

**Preservation of Evidence:**

Under sanction of spoliation of evidence, please preserve all documents and communications related to Mr. Adrian Chacon:

1. All correctional officer daily logs for the period of Mr. Chacon's incarceration at PNM from August 4, 2021, to the present.
2. All cell check logs for checks on Mr. Chacon for the period August 4, 2021, to the present.
3. All other video and audio recordings related to the subject INCIDENT to include:
  - i. Video from the cell where he was incarcerated for the timeframe 1:00-5:00 p.m. on August 4, 2021.
  - ii. All video footage capturing, in any way, the area around phone cage 1A in



- A-Pod during the timeframe of 1:00-5:00 p.m. on August 4, 2021.
  - iii. All video footage of the hallway leading to Mr. Chacon's cell to phone cage 1A in A-Pod during the timeframe of 1:00-5:00 p.m. on August 4, 2021.
  - iv. All video footage of the hallways leading from Mr. Chacon's cell to the medical bay for the timeframe 1:00-5:00 p.m. on August 4, 2021.
  - v. All video footage of the medical bay area and offices used by inmates housed in A-Pod for the timeframe 1:00-5:00 p.m. on August 4, 2021.
  - vi. All video footage for the medical observation cell or room where Mr. Chacon was taken between the timeframe of 1:00-5:00 p.m. on August 4, 2021.
4. Physical location history for Mr. Adrian Chacon from August 4, 2021, to the present.
  5. Copies of any informal complaints or formal grievances filed by Mr. Chacon from August 4, 2021, to the present.
  6. Copies of any disciplinary files relating to Mr. Chacon from August 4, 2021, to the present.
  7. Copies of all good-time figuring sheets for Mr. Chacon for the period May 1, 2021, to the present.
  8. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
    - a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
    - b. "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
    - c. "photograph" means a photographic image or its equivalent stored in any form.
  9. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic records must be maintained and preserved even if there are hard copy printouts of said records.
  10. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with Mr. Chacon.

Please also preserve all 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.

Adrian Chacon  
Tort Claims Notice  
August 12, 2021

Sincerely,

COLLINS & COLLINS, P.C.

/s/**Parrish Collins**

Parrish Collins  
PC/gtg

cc: Jim Reinhart, Wexford Health Sources

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

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

Sent: Friday, August 13, 2021 9:18 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018429

Result: OK

End Time: Fri 13 Aug 2021 09:17:31

File Name: 8.13.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5054762226

Thanks,

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

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

Sent: Friday, August 13, 2021 9:15 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018428

Result: OK

End Time: Fri 13 Aug 2021 09:14:55

File Name: 8.13.21 - TCN with Spoliation.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 4129378874

Thanks,

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

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

Sent: Friday, August 13, 2021 9:13 AM

To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018427  
Result: OK  
End Time: Fri 13 Aug 2021 09:13:07  
File Name: 8.13.21 - TCN with Spoliation.pdf  
Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>  
Sent: Friday, August 13, 2021 9:12 AM  
To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018426  
Result: OK  
End Time: Fri 13 Aug 2021 09:11:56  
File Name: 8.13.21 - TCN with Spoliation.pdf  
Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278283

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>  
Sent: Friday, August 13, 2021 9:10 AM  
To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018425  
Result: OK  
End Time: Fri 13 Aug 2021 09:10:17

File Name: 8.13.21 - TCN with Spoliation.pdf  
Category: Sending Jobs

Result	Job Type	Address
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OK	FAX	5058278533
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Thanks,

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

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

Sent: Thursday, March 18, 2021 4:01 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 015296

Result: OK

End Time: Thu 18 Mar 2021 16:01:06

File Name: 3.18.21 - TCN with Spoliaiton, DIL& Grievances.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

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

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

Sent: Thursday, March 18, 2021 3:59 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 015295

Result: OK

End Time: Thu 18 Mar 2021 15:59:29

File Name: 3.18.21 - TCN with Spoliaiton, DIL& Grievances.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058272969

Thanks,

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

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

Sent: Thursday, March 18, 2021 3:57 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 015294

Result: OK

End Time: Thu 18 Mar 2021 15:57:20

File Name: 3.18.21 - TCN with Spoliaiton, DIL& Grievances.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

**COLLINS & COLLINS, P.C.**

Attorneys at Law  
P. O. Box 506  
Albuquerque, NM 87103  
Telephone: (505) 242-5958 Fax (505) 242-5968

August 20, 2021

**NOTICE OF TORT CLAIM**

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

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***

Wexford Health Sources, Inc.  
c/o/ Risk Management Department  
501 Holiday Drive, Suite 300  
Pittsburgh, PA 15220  
***Via Fax only to (412)-937-8874***

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

Warden  
PNM  
P.O. Box 1059  
Santa Fe, New Mexico 87504-1059  
***Via Fax only to (505)-827-8283***

Governor Michelle Lujan-Grisham  
490 Old Santa Fe Trail Room 400  
Santa Fe, NM 8750  
***Via Fax only to (505)-476-2226***

Our Client: Adrian Chacon (NMCD #87094)  
Subject: Retaliation for Filing Grievances and Seeking Legal Assistance  
Defendants: New Mexico Corrections Department (NMCD), Wexford Health Sources  
Date of Incidence: August 18, 2021  
Location of Interest: Penitentiary of New Mexico

**Notice of Tort Claims, Notice of New Mexico Civil Rights Act Violation and Preservation of Evidence**

Gentlemen\Mesdames:

We are writing on behalf of the above captioned client and matters. 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 and the New Mexico Civil Rights Act regarding the actions and inaction of the Penitentiary of New Mexico, (Facility) New Mexico Corrections Department (NMCD), Wexford Health Sources, and the State of New Mexico (and their employees, staff contractors and other agents) for the reckless and grossly indifferent disregard for the civil rights and safety of Adrian Chacon as outlined below.

**Facts:**

NMCD employees, staff and agents have continued a campaign of retaliation against Adrian Chacon despite two prior Tort Claims Notices regarding violent retaliation against Mr. Chacon for seeking legal assistance and filing grievances. The retaliation has persisted. On August 18, 2021, Mr. Chacon reports that correctional officer Gonzales-King and another unidentified officer in the control booth threatened violence because Mr. Chacon had requested to speak with a supervisor. They threatened both physical violence and the use of pepper spray on Mr. Chacon. Sgt Ramirez was forced to intervene so that Mr. Chacon could meet with the Unit Manager.

As noted in prior Tort Claims Notices, Mr. Chacon has significant lifetime mental health issues including schizophrenia, bi-polar disorder, and PTSD, all of which have been worsened by the ongoing and violent retaliation against Mr. Chacon. These are well-known to NMCD and Wexford as he is on medication and has been diagnosed with these illnesses. When Mr. Chacon expressed suicidal ideation to a mental health worker, she told him he would be fine and offered him a puzzle. This is an improvement over past suggestions from NMCD staff who told Mr. Chacon that if he wanted mental health services, he would have to attempt suicide.

In addition, Mr. Chacon reports that since his last grievance and associated Notice of Claims, correctional officers have taken to telling him that they have spit in his food. As a result, he has missed meals.

This ongoing retaliation and intentional cruelty is a violation of both state and federal law under the New Mexico Tort Claims Act, the New Mexico Civil Rights Act, Section 1983, the Americans with Disabilities Act and the Rehabilitation Act.

**Preservation of Evidence:**

Under the laws prohibiting spoliation of evidence, please take all necessary steps to preserve the following evidence associated with the subject incident:

1. The full and complete inmate file for Adrian Chacon to include all grievance and disciplinary files.
2. All booking and intake documents for Adrian Chacon.
3. All medical records obtained or otherwise received for Adrian Chacon.
4. All requests by NMCD, its staff, agents, or contractors, for Adrian Chacon's medical records from any outside medical providers.

5. All correctional officer daily logs for the pod and unit in which Adrian Chacon was housed 's incarceration at the Penitentiary of New Mexico for the period July 1 2021 to the present.
6. All cell check logs for checks on Adrian Chacon for the for the period July 1 2021 to the present.
7. All recorded calls involving Mr. Adrian Chacon as a party to the call.
8. All other video and audio recordings related to the subject INCIDENT to include:
9. All Video:
  - a. Capturing the cell where Mr. Chacon was incarcerated for the timeframe July 1 2021 to the present.
  - b. Capturing the pod and unit where Mr. Chacon was incarcerated for the timeframe July 1 2021 to the present.
  - c. All video capturing Mr. Chacon in the medical unit for the timeframe July 1 2021 to the present.
  - d. All video of hallways leading to and from the medical unit on in the medical unit for the timeframe July 1 2021 to the present.
  - e. All video of hallways leading to and from the pod(s) and unit(s) where Mr. Chacon was housed for the timeframe July 1 2021 to the present.
10. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
  - a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
  - b) "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
  - c) "photograph" means a photographic image or its equivalent stored in any form.
11. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic records must be maintained and preserved even if there are hard copy printouts of said records.
12. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with Adrian Chacon.

Please also preserve all 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

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

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

Sent: Friday, August 20, 2021 11:50 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018597

Result: OK

End Time: Fri 20 Aug 2021 11:49:48

File Name: 8.19.21 TCN with Spoliation DIL MD.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 4129378874

Thanks,

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

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

Sent: Friday, August 20, 2021 11:48 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018598

Result: OK

End Time: Fri 20 Aug 2021 11:48:19

File Name: 8.19.21 TCN with Spoliation DIL MD.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5054762226

Thanks,

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

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

Sent: Friday, August 20, 2021 11:41 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018596

Result: OK

End Time: Fri 20 Aug 2021 11:41:16  
File Name: 8.19.21 TCN with Spoliation DIL MD.pdf  
Category: Sending Jobs

Result Job Type Address

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OK FAX 5058278283

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>  
Sent: Friday, August 20, 2021 11:39 AM  
To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018595  
Result: OK  
End Time: Fri 20 Aug 2021 11:39:18  
File Name: 8.19.21 TCN with Spoliation DIL MD.pdf  
Category: Sending Jobs

Result Job Type Address

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OK FAX 5058272969

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>  
Sent: Friday, August 20, 2021 11:43 AM  
To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018594  
Result: OK  
End Time: Fri 20 Aug 2021 11:42:57  
File Name: 8.19.21 TCN with Spoliation DIL MD.pdf  
Category: Sending Jobs

Result Job Type Address

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OK FAX 5058278533

Thanks,

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

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

Sent: Friday, August 20, 2021 2:06 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018607

Result: OK

End Time: Fri 20 Aug 2021 14:06:01

File Name: 8.20.21 TCN with Spoliation DIL MD.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058272969

Thanks,

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

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

Sent: Friday, August 20, 2021 2:05 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 018606

Result: OK

End Time: Fri 20 Aug 2021 14:04:38

File Name: 8.20.21 TCN with Spoliation DIL MD.pdf

Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278533

Thanks,

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

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

Sent: Friday, August 20, 2021 2:08 PM

To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018608  
Result: OK  
End Time: Fri 20 Aug 2021 14:07:32  
File Name: 8.20.21 TCN with Spoliation DIL MD.pdf  
Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 5058278283

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>  
Sent: Friday, August 20, 2021 2:09 PM  
To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018609  
Result: OK  
End Time: Fri 20 Aug 2021 14:09:09  
File Name: 8.20.21 TCN with Spoliation DIL MD.pdf  
Category: Sending Jobs

Result Job Type Address

-----  
OK FAX 4129378874

Thanks,

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

From: ccapcscans@gmail.com <ccapcscans@gmail.com>  
Sent: Friday, August 20, 2021 2:11 PM  
To: Guy Gambill <guy@collinsattorneys.com>  
Subject: TASKalfa 3212i Job end report mail

Job No.: 018610  
Result: OK  
End Time: Fri 20 Aug 2021 14:11:16

File Name: 8.20.21 TCN with Spoliation DIL MD.pdf  
Category: Sending Jobs

Result	Job Type	Address
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OK	FAX	5054762226
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Thanks,



**COLLINS & COLLINS, P.C.**

Attorneys at Law  
P. O. Box 506  
Albuquerque, NM 87103  
Telephone: (505) 242-5958 Fax (505) 242-5968

August 20, 2021

**NOTICE OF TORT CLAIM**

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

Office of General Counsel  
Brian Fitzgerald  
New Mexico Corrections Department  
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***Via Fax only to (505)-827-8533***

Wexford Health Sources, Inc.  
c/o/ Risk Management Department  
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***Via Fax only to (412)-937-8874***

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

Warden  
PNM  
P.O. Box 1059  
Santa Fe, New Mexico 87504-1059  
***Via Fax only to (505)-827-8283***

Governor Michelle Lujan-Grisham  
490 Old Santa Fe Trail Room 400  
Santa Fe, NM 8750  
***Via Fax only to (505)-476-2226***

Our Client: Adrian Chacon (NMCD #87094)  
Subject: Retaliation for Filing Grievances and Seeking Legal Assistance  
Defendants: New Mexico Corrections Department (NMCD), Wexford Health Sources  
Date of Incidence: August 20, 2021  
Location of Interest: Penitentiary of New Mexico

**Notice of Tort Claims, Notice of New Mexico Civil Rights Act Violations  
and Notice of Need to Preserve Evidence**

Gentlemen\Mesdames:

We are writing on behalf of the above captioned client and matters. 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 and the New Mexico Civil Rights Act regarding the actions and inaction of the Penitentiary of New Mexico, (Facility) New Mexico Corrections Department (NMCD), Wexford Health Sources, and the State of New Mexico (and their employees, staff contractors and other agents) for the reckless and grossly indifferent disregard for the civil rights and safety of Adrian Chacon as outlined below.

**Facts:**

Following our prior Notice of Claims sent earlier today, it has been reported that an Officer Archuleta pulled Mr. Chacon from his cell. It has been reported that Officer Archuleta questioned Mr. Chacon about the suspension of the Warden and asked what Mr. Chacon knew about the suspension. It has been reported that Officer Archuleta then slammed a door on Mr. Chacon's hand. Mr. Chacon was seen by medical who in turn refused to properly evaluate or treat his injured hand. Medical refused even x-rays telling Mr. Chacon his hand was fine. The correctional and medical staffs at PNM are out of control. It seems that they are ramping up retaliation for Mr. Chacon's attempts at gaining legal protections and legal counsel.

This ongoing retaliation and intentional cruelty is a violation of both state and federal law under the New Mexico Tort Claims Act, the New Mexico Civil Rights Act, Section 1983, the Americans with Disabilities Act and the Rehabilitation Act.

**Preservation of Evidence:**

Under the laws prohibiting spoliation of evidence, please take all necessary steps to preserve the following evidence associated with the subject incident:

1. The full and complete inmate file for Adrian Chacon to include all grievance and disciplinary files.
2. All medical records created, obtained or otherwise received for Adrian Chacon.
3. All requests by NMCD, its staff, agents, or contractors, for Adrian Chacon's medical records from any outside medical providers.
4. All correctional officer daily logs for the pod and unit in which Adrian Chacon was housed 's incarceration at the Penitentiary of New Mexico for the period July 1, 2021, to the present.
5. All cell check logs for checks on Adrian Chacon for the for the period July 1, 2021, to the present.
6. All recorded calls involving Mr. Adrian Chacon as a party to the call.
7. All other video and audio recordings related to the subject INCIDENT to include all video:

- a. Capturing the cell where Mr. Chacon was incarcerated for the timeframe July 1 2021 to the present.
  - b. Capturing the pod and unit where Mr. Chacon was incarcerated for the timeframe July 1 2021 to the present.
  - c. All video capturing Mr. Chacon in the medical unit for the timeframe July 1, 2021 to the present.
  - d. All video of hallways leading to and from the medical unit for the timeframe July 1 2021 to the present.
  - e. All video of hallways leading to and from the pod(s) and unit(s) where Mr. Chacon was housed for the timeframe July 1, 2021 to the present.
8. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
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  - b) "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
  - c) "photograph" means a photographic image or its equivalent stored in any form.
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Please also preserve all 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,

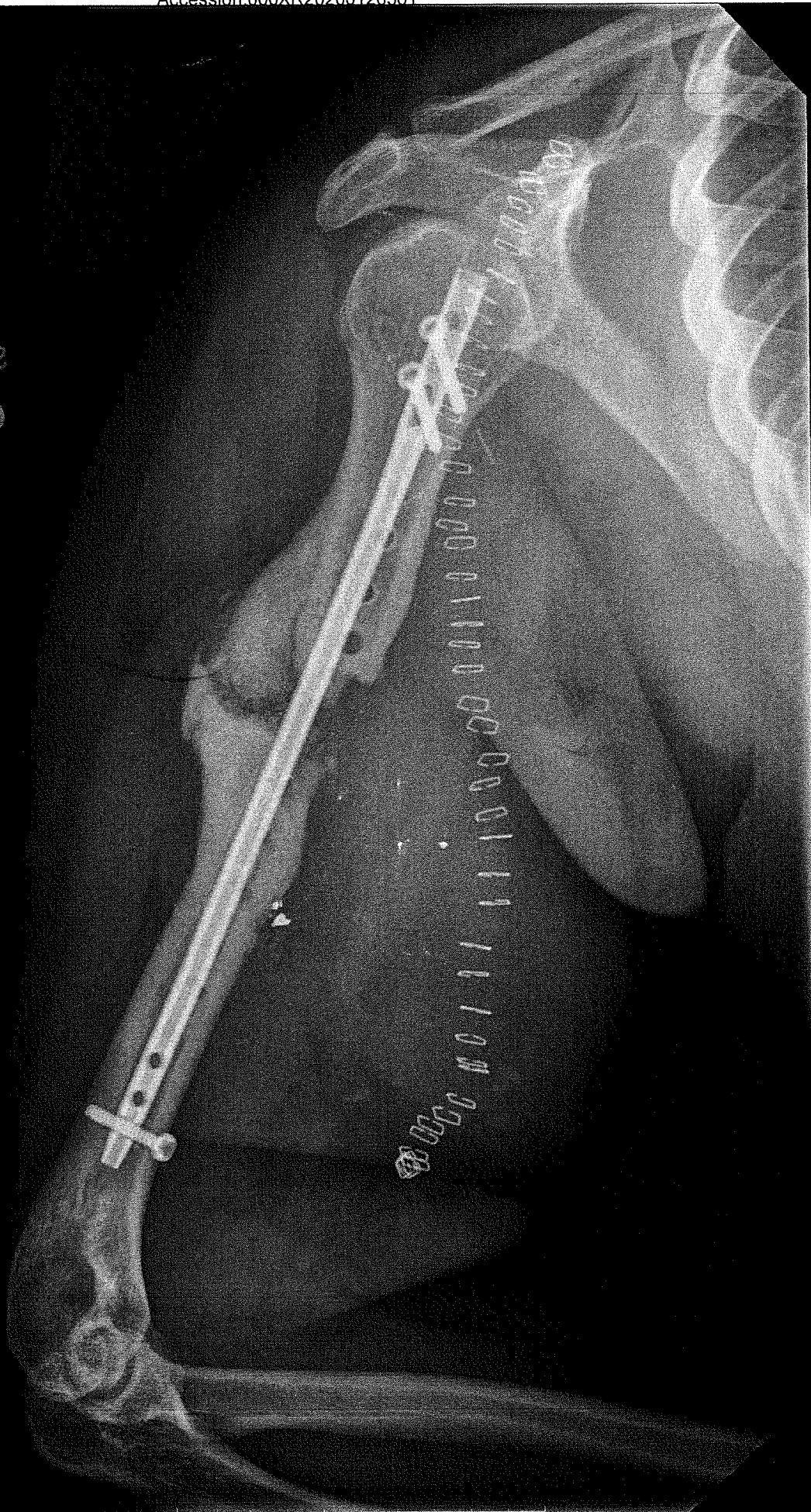
COLLINS & COLLINS, P.C.

/s/Parrish Collins

Parrish Collins

PC/gtg

182  
B



Standing

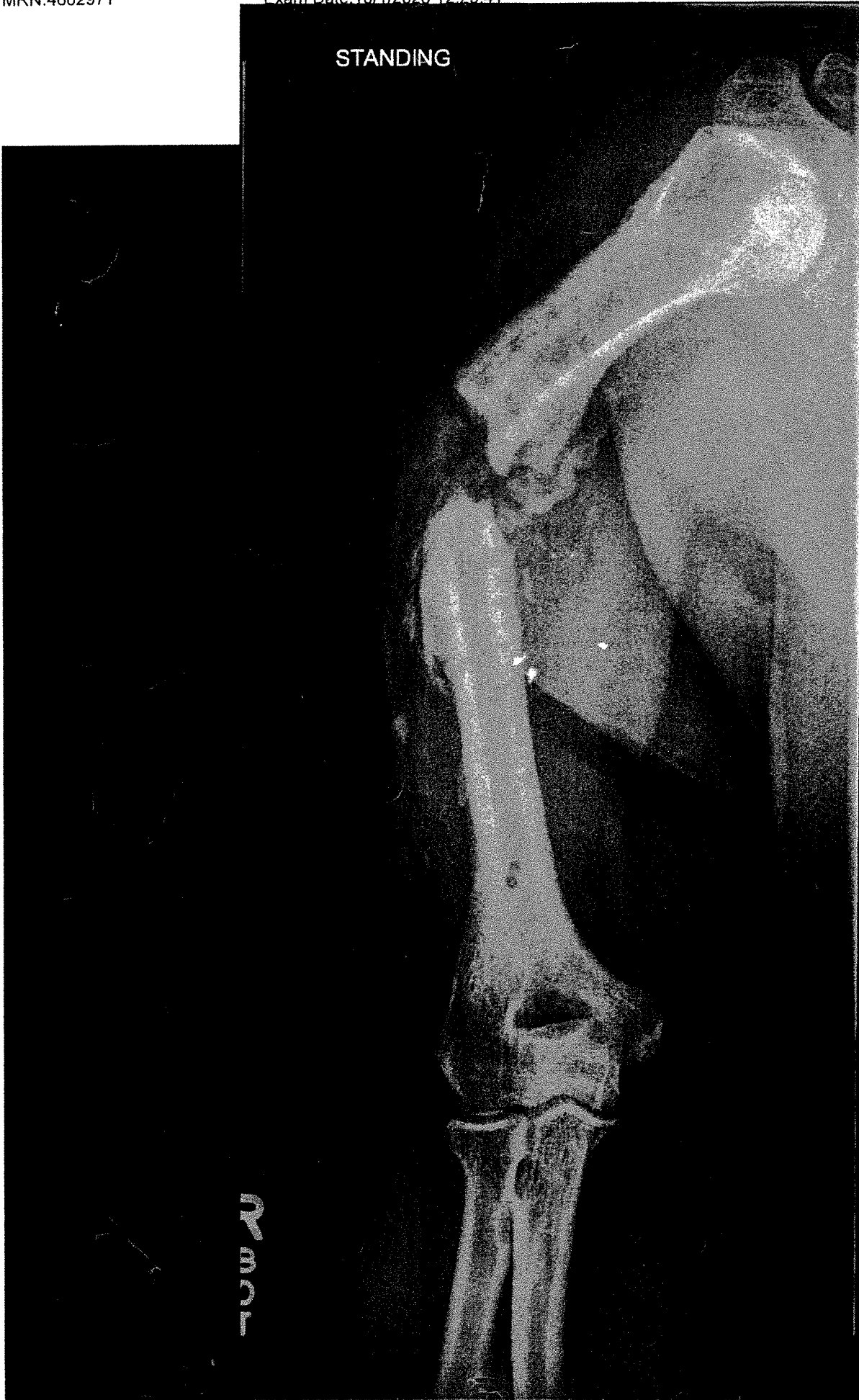






Upright

STANDING







Patient Name: Chacon, Adrian, M  
Date of Birth: 9/7/1989  
MRN: 4602971

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