

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

EUGENIO S. MATHIS, as personal
representative of the Estate of
GILBERT CHACON, deceased,

Plaintiff,

v.

No. D-101-CV-2021-02630

WEXFORD HEALTH SOURCES, INC.; STATE
OF NEW MEXICO; NEW MEXICO
CORRECTIONS DEPARTMENT; and JOHN
DOES 1-10 in their individual and official
capacities, (employees, staff, agents of Wexford
Health Sources, State of New Mexico, New Mexico
Corrections Department, respectively).

Case assigned to Ellenwood, Kathleen McGarry

Defendants.

**COMPLAINT FOR WRONGFUL DEATH, MEDICAL MALPRACTICE AND
RELATED CLAIMS**

COMES NOW, the PLAINTIFF, EUGENIO MATHIS, as personal representative of the
Estate of Gilbert Chacon, deceased, by and through attorneys COLLINS & COLLINS, P.C.
(Parrish Collins) and SANDOVAL FIRM (Richard A. Sandoval), and for his cause of action
states as follows:

I. PARTIES

A. *PLAINTIFF*

1. PLAINTIFF EUGENIO MATHIS was appointed Wrongful Death Personal
Representative of the Estate of Gilbert Chacon, deceased, on May 11, 2021. He brings this action
in that capacity.

2. GILBERT CHACON (“Mr. Chacon”) was, at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.

3. Mr. Chacon was incarcerated at Central New Mexico Correctional Facility (“CNMCF”) in Los Lunas, New Mexico.

B. NEW MEXICO CORRECTIONS DEPARTMENT

4. DEFENDANT New Mexico Corrections Department (“NMCD”) and Central New Mexico Correctional Facility (“CNMCF”) are entities of the State of New Mexico.

5. CNMCF is operated by NMCD.

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

7. NMCD is responsible for contracting medical services for all NMCD facilities, including CNMCF.

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

9. NMCD Defendants have a duty to provide for the safety and security of incarcerated individuals.

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

C. WEXFORD HEALTH SOURCES, INC.

11. 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.

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

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

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

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

II. JURISDICTION AND VENUE

16. All acts complained of herein occurred in Valencia County, New Mexico.

17. A Tort Claims Notice was timely sent on April 20, 2021.

18. Plaintiff asserts all available administrative remedies have been exhausted, as required by 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11.

19. 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.

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

21. This Court has jurisdiction over the subject matter of Plaintiff's New Mexico Tort Claims Act claims against the State of New Mexico and New Mexico Corrections Department and John Doe employees, staff and agents under NMSA § 41-4-18 and NMSA § 38-3-1 (A).

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

III. STATEMENT OF FACTS

A. *MEDICAL FACTS*

23. Mr. Chacon was, at the time at the time of his death, a 67-year-old male NMCD inmate.

24. Mr. Chacon had a medical history of Chronic Obstructive Pulmonary Disease (COPD), right lower extremity Deep Venous Thrombosis (DVT), Hepatitis C, hypertension, chronic back pain, and pre-diabetes mellitus.

25. Mr. Chacon had a surgical history of a left right femoral-femoral graft, a stent placement in the right groin, lumbar surgery, and kidney removal.

26. Mr. Chacon was noted to have left lower leg pain during medical evaluation on February 19, 2021.

27. Mr. Chacon was noted to have pain in his left hip and right shoulder during medical evaluation requested by him on March 31, 2021.

28. Mr. Chacon was evaluated by a Registered Nurse on April 11, 2021 for his complaints of right and left lower back pain that was a stabbing pain which extended down both his legs. Mr. Chacon rated his pain as 10/10. Mr. Chacon reported he could not move his left leg and reported constant cramping pain mainly in left side that started at back and radiated down the leg to toe. His femoral pulse was not checked.

29. On April 12, 2021, Mr. Chacon placed a health request. He stated left hip/leg was numb with cramping. He reported that he could not feel the left side of his hip and leg. Mr. Chacon further reported that he could not lift himself off bed. He reported pain that was so severe that his cellmate had to carry him to the toilet.

30. Not until April 13, 2021 did a nurse practitioner order Mr. Chacon be sent to an emergency room for treatment of suspected Peripheral Artery Disease.

31. Mr. Chacon was first seen at Union County General Hospital but was transferred to the University of New Mexico Hospital (UNMH) the same day, April 13, 2021.

32. At UNMH, Mr. Chacon was diagnosed with acute hyperkalemia, rhabdomyolysis, aortic occlusion, vasculopathy, hypotension, ventricular tachycardia, anuric stage III acute kidney injury, and altered mental status.

33. Mr. Chacon's left leg was amputated above the knee as a result of aortic occlusion.

34. Mr. Chacon remained in critical condition at UNMH, and ultimately died of his injuries on April 15, 2021.

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

35. Wexford submitted a TECHNICAL PROPOSAL FOR RFP #20-770-19-06067 ("Wexford TechProp") for Inmate Medical Services dated August 21, 2019.

36. Wexford TechProp was over 830 pages long.

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

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

39. Wexford TechProp did not mention punitive damages.

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

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

42. The PSC was 65 pages in length.

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

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

45. The PSC did not mention punitive damages.

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

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

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

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

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

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

52. Wexford was legally competent to enter the PSC.

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

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

55. The PSC was not vague.

56. The PSC was not oppressive to Wexford.
57. The PSC was not void as a matter of public policy.
58. Wexford is and was at all relevant times bound by the terms of the PSC.
59. The PSC is fully enforceable against Wexford as written and executed.
60. By the terms of the PSC, Wexford is an independent contractor performing professional services for the Agency.

61. 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.

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

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

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

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

66. 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.

67. 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.

68. 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.

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

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

71. 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.

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

73. 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.

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

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

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

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

C. FACTS SPECIFIC TO NMCD DEFENDANTS

78. NMCD Defendants have an ongoing duty to reasonably and prudently operate the medical facility within CNMCF, and had such a duty at the time of Mr. Chacon's incarceration at CNMCF.

79. NMCD maintained authority over its contractors, including Wexford.

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

81. NMCD Defendants can intercede on behalf of NMCD if independent contractors are not appropriately caring for NMCD inmates.

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

83. No NMCD Defendants interceded to protect inmates from gross and reckless medical negligence at CNMCF.

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

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

86. NMCD routinely ignores medical grievances.

87. NMCD routinely destroys medical grievances.

88. NMCD routinely fails to process medical grievances correctly.

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

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

91. During the term of the PSC, NMCD did not find in favor of a single NMCD inmate housed at CNMCF.

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

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

94. NMCD had full authority to enforce the PSC.

95. NMCD had at all times relevant to this Complaint the authority to compel Wexford to treat Mr. Chacon.

96. NMCD has obtained substantial budgets for treatment of the medical needs of inmates.

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

98. NMCD, through the grievance process, can control the manner in which Wexford can perform its duties.

99. NMCD, through the terms of the PSC, can control the manner in which Wexford can perform its duties.

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

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

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

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

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

D. FACTS COMMON TO ALL DEFENDANTS

104. All Defendants collectively knew of Mr. Chacon's medical history and medical condition, and ignored Mr. Chacon's medical grievances and deliberately refused to provide necessary and proper medical care.

105. All Defendants, including as-yet unidentified John Doe Defendants, individually knew of Mr. Chacon's medical history and medical condition, and ignored Mr. Chacon's medical grievances and deliberately refused to provide necessary and proper medical care.

106. All Defendants knew that Mr. Chacon was in need of immediate treatment due to his medical history and presentation of symptoms suggestive of acute limb ischemia, including lower extremity pain.

107. All Defendants knew that Mr. Chacon's medical condition was worsening.

108. All Defendants knew that untreated symptoms of acute limb ischemia, including lower extremity pain, could lead to high risk of amputation, cardiovascular events and death.

109. All Defendants were complicit and acquiesced in the denial of proper medical care to Mr. Chacon.

110. All Defendants conspired together to deny Mr. Chacon necessary and proper medical care leading to the physical pain, severe emotional and psychological pain and suffering, severe and permanent physical injuries, and death from complications from untreated and improperly treated critical limb ischemia.

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

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

112. In undertaking the diagnosis, care and treatment of Mr. Chacon, Wexford Defendants, 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.

113. Given Mr. Chacon's medical history, the presence of cramping and constant muscle pain in the left lower extremity on April 11, 2021 should have prompted referral for further evaluation of peripheral artery disease.

114. Given Mr. Chacon's medical history, the presence of severe lower extremity pain with numbness and weakness should have aroused the suspicion of acute limb ischemia and he should have been appropriately referred for evaluation of acute limb ischemia on April 12, 2021.

115. Wexford, by and through its employees, staff and agents, failed to appropriately evaluate Mr. Chacon until April 13, 2021.

116. The delay in referral of Mr. Chacon for further evaluation of suspected peripheral artery diseases with acute limb ischemia was grossly negligent, reckless and deliberately indifferent to Mr. Chacon's medical condition and health risks.

117. Wexford, by and through its employees, staff and agents, failed to note prior history of revascularization and refer Mr. Chacon for evaluation of cramping and constant muscle pain in the left lower extremity on April 11, 2021. The failure was grossly negligent, reckless and deliberately indifferent to Mr. Chacon's medical condition and health risks.

118. The grossly negligent, reckless and deliberately indifferent failure to appropriately refer Gilbert Chacon for evaluation of peripheral artery diseases in the setting of medical history and symptoms suggestive of acute limb ischemia on April 12, 2021 resulted in emergent bilateral guillotine above-knee amputation for the aortic occlusion with bilateral lower extremity critical limb ischemia, acute hyperkalemia, rhabdomyolysis, anuric stage III acute kidney injury, hypotension, ventricular tachycardia, bilateral pulmonary edema and subsequent death of Mr. Chacon.

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

120. 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 timely 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 lower extremity pain and symptoms of suspected peripheral artery disease and acute limb ischemia;
- f. Failure to provide Mr. Chacon with necessary and proper pain management; and
- g. Failure to protect and preserve the health of Mr. Chacon.

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

122. 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 Plaintiff is entitled to punitive damages.

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

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

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

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

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

127. NMCD's medical grievance abuses outlined above are a proximate cause of injuries resulting therefrom.

128. NMCD's medical grievance abuses create an unsafe environment at NMCD facilities, including CNMCF, under NMSA §41-4-6, and constitutes negligent operation of a medical facility under NMSA §41-4-9.

129. NMCD Defendants, by and through employees, staff and agents, knew of Mr. Chacon's medical history, and with wanton, willful and deliberate indifference ignored Mr. Chacon's medical grievances, ignored National Commission on Correctional Health Care ("NCCHC") emergent medical condition, failed to take action within its authority to protect the health of Mr. Chacon.

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

131. NMCD has failed to enforce important provisions of the PSC which led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to Mr. Chacon.

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

133. NMCD determined not to enforce the NCCHC standards.

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

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

136. NMCD allowed ACA accreditation for its facilities to lapse under the medical care of Wexford.

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

138. 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.

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

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

141. NMCD must enforce the PSC and/or terminate independent contractors if the care provided does not meet NMCD, ACA or NCCHC standards or constitutional definitions of adequate health care.

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

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

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

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

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

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

147. NMCD Defendants negligently failed to oversee Wexford in the provision of medical care to NMCD inmates, which contributed to Mr. Chacon's injuries and death.

148. 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 and death.

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

150. Wexford's medical staff at CNMCF lacked sufficient expertise to assess, treat and manage Plaintiff's health conditions.

151. Wexford had a duty under the PSC, ACA and NCCHC to properly refer Mr. Chacon to be seen by a physician who could effectively treat him.

152. NMCD Defendants negligently failed to enforce critical terms of the PSC, including but not limited to, failure to compel CNMCF and/or Wexford to obtain accreditation by the ACA and NCCHC, which contributed to Mr. Chacon's injuries.

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

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

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

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

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

158. 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.

159. 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 and death.

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

161. 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 and death.

162. 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.

163. NMCD has a duty to operate CNMCF in a safe and reasonably prudent manner.

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

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

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

167. 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.

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

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

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

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

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

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

173. 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.

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

175. Wexford employees, staff and agents were unqualified and delayed proper treatment for Mr. Chacon until April 13, 2019, when he was finally sent to a hospital emergency room for treatment.

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

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

178. 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 him, Wexford breached its duty to medically treat Mr. Chacon in a reasonably prudent manner.

179. The process and policy of denying on-site providers the ability to refer patients to outside medical specialists, as outlined above, 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.

180. Wexford Defendants failed to properly address PLAINTIFF's medical condition.

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

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

183. 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.

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

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

186. 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 suspected Peripheral Artery Disease and acute limb ischemia, and related health conditions.

187. Wexford does not comply with ACA, NCCHC or New Mexico standards of healthcare.

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

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

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

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

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

192. NMCD has authority over all NMCD correctional facilities, including CNMCF.

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

194. NMCD is the contracting party to the PSC entered into between NMCD and Wexford.

195. NMCD has sole authority, control and responsibility over the execution, implementation and enforcement of the PSC.

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

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

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

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

200. NMCD Defendants refused or otherwise failed to enforce these provisions of the PSC, ACA and NCCHC.

201. NMCD Defendants knew that Wexford was not abiding by the terms of the PSC, ACA and NCCHC.

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

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

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

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

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

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

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

209. NMCD Defendants have knowingly allowed, aided and abetted in Wexford's failure to obtain and maintain ACA and NCCHC accreditation.

210. Wexford has violated numerous provisions of ACA and NCCHC.

211. NMCD Defendants have taken no action to correct these violations or otherwise hold Wexford to ACA, NCCHC or New Mexico medical standards of care.

212. 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 PSC.

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

214. NMCD Defendants have failed to properly maintain oversight and enforcement of the PSC.

215. 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.

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

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

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

219. NMCD must enforce the PSC and/or terminate independent contractors if the care provided does not meet NMCD, ACA or NCCHC standards or constitutional definitions of adequate health care.

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

221. The failures of NMCD Defendants led to serious and permanent harm to Mr. Chacon.

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

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

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

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

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

226. 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 Peripheral Artery Disease and acute limb ischemia.

227. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of patients with symptoms of Peripheral Artery Disease and acute limb ischemia.

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

229. Wexford routinely violates NMCD and the PSC medical treatment and care policies and provisions.

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

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

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

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

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

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

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

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

238. 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.

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

240. Plaintiff is entitled to punitive damages against Wexford.

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

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

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

3. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper medical treatment of inmates.

4. 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 suspected Peripheral Artery Disease and acute limb ischemia, and related health conditions.

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

6. NMCD failed to enforce the PSC.

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

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

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

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

11. Plaintiff 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: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE
(Wexford)**

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

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

14. As a result of said conspiracy, PLAINTIFF suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of NMCD DEFENDANTS, Wexford.

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

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

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

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

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

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

20. Wexford is responsible to Plaintiff under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

21. Wexford is responsible to Plaintiff under the doctrine of agency for the conduct of its employees, staff and agents.

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

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

23. The injuries and damages suffered by Mr. Chacon were proximately caused by wanton, willful and reckless actions and inactions of all Defendants.

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

25. 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.

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

27. Plaintiff 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.

28. Plaintiff is entitled to punitive damages against Wexford.

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

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

30. The acts and omissions complained of in the causes of action stated above, upon information and belief, are believed to be of such an egregious nature, in reckless, wanton, willful, deliberate and total disregard to the health of Plaintiff, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, punitive damages or exemplary damages to punish and deter these types of acts and omissions from occurring in the future are appropriate.

WHEREFORE, PLAINTIFF requests judgment as follows:

- A. Compensatory damages against all DEFENDANTS, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to Mr. Chacon;
 - B. Punitive damages in an undetermined amount against Wexford;
 - C. Costs incurred by Plaintiff, including pre-judgment and post-judgment interest;
- and
- D. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

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-and-

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