

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

EUGENIO S. MATHIS, as personal representative
of the ESTATE OF JONATHAN CISNEROS

Case assigned to Biedscheid, Bryan

Plaintiff,

v.

No. D-101-CV-2022-00453

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, Inc., State of New Mexico, and New
Mexico Corrections Department, respectively).

Defendants.

COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS

COMES NOW, Plaintiff, Eugenio S. Mathis, as personal representative of the
Estate of Jonathan Cisneros, by and through his attorneys Collins & Collins, P.C.
(Parrish Collins) and Guebert Gentile & Piazza P.C. (Robert F. Gentile, Elizabeth Piazza and
Julia H. Purdy), and for his cause of action states as follows:

I. PARTIES

A. *PLAINTIFF*

1. Jonathan Cisneros (“Mr. Cisneros”) was at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.
2. Mr. Cisneros, at the time of the original incident as set forth below, was an inmate at Central New Mexico Correctional Facility (“CNMCF”), a NMCD prison facility.
3. Mr. Cisneros died while in the custody of NMCD at CNMCF on June 15, 2021.
4. Eugenio Mathis is the personal representative for the Estate of Jonathan Cisneros.

B. NEW MEXICO CORRECTIONS DEPARTMENT

5. Defendant NMCD and CNMCF are entities of the State of New Mexico.
6. CNMCF is operated by NMCD.
7. NMCD retains ultimate authority and responsibility over CNCMF which is operated in accordance with NMCD rules, policies and procedures.
8. NMCD is responsible for contracting of medical services for all NMCD facilities including CNMCF.
9. At all material times, NMCD acted through its employees, staff and agents.
10. NMCD Defendants have a duty to provide for the safety and security for those it incarcerates.
11. NMCD governs CNMCF, while independent contractors carry out discrete duties at the discretion of NMCD.

C. WEXFORD HEALTH SOURCES, INC.

12. 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.
13. Wexford is foreign profit corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico.
14. Wexford is neither a local public body nor a state employee under NMSA §41-4-7(F).
15. Wexford at all times material to this Complaint acted by and through its employees, staff and agents.

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

II. JURISDICTION AND VENUE

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

18. A Tort Claims Notice was timely sent on June 17, 2021 and an Amended Tort Claims Notice was sent on June 18, 2021. **Exhibits 1 & 2.**

19. Mr. Cisneros is not imprisoned at the time of filing of this Complaint so 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11 do not apply.

20. 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.

21. 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.

22. This Court has jurisdiction over the subject matter of Mr. Cisneros'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, NMSA § 38-3-1 (A) NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

23. 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

24. Mr. Cisneros was 37 years old at the time of his death on June 15, 2021.

25. Mr. Cisneros had a significant past medical history of seizure disorder, traumatic brain injury, Post Traumatic Stress Disorder (“PTSD”), bipolar, schizophrenia, Attention Deficit Hyperactivity Disorder (“ADHD”), and depression, of which Defendant were aware.

26. Mr. Cisneros had previous suicide attempts, which were documented in NMCD records, including an attempt at 15 years old by gun, an overdose on Morphine at age 16, and an attempted hanging at 22 years old.

27. Mr. Cisneros had several previous suicide attempts while incarcerated in NMCD.

28. On September 10, 2020, Mr. Cisneros attempted suicide by cutting his left wrist. He was found unresponsive and was sent to the emergency room from Southern New Mexico Correctional Facility (“SNMCF”) to by ambulance.

29. On September 21, 2020, Mr. Cisneros was transferred from SNMCF to MHR CNMCF for psychiatric evaluation.

30. On October 5, 2020, Mr. Cisneros was referred to Cruz-Grost, MD for a Mental Health Treatment Center (“MHTC”) admission. He was admitted to MHTC because of his suicide attempt that required hospitalization. Mr. Cisneros was stabilized with medication while at MHTC and was discharged.

31. His discharge medications included Buspar, Keppra, Trileptal, Remeron, Propranolol and Phenobarbital.

32. On October 8, 2020, Mr. Cisneros reported that he “was done,” and that he made the decision to end his life.

33. On December 1, 2020, Mr. Cisneros was found on the floor with blood surrounding him. He had a laceration to his left forearm and left wrist.

34. Mr. Cisneros was placed on suicide watch and placed in restraints for safety.
35. On June 3, 2021, Mr. Cisneros was assessed by a psychiatrist. The decision was made to wean Mr. Cisneros off Inderal.
36. On June 4, 2021, the psychiatrist advised to wean Mr. Cisneros off Inderal and continue Remeron.
37. On June 5, 2021, the psychiatrist diagnosed Mr. Cisneros with PTSD and unresponsive depressive disorder and advised referral to Memorial emergency department for seizures.
38. Mr. Cisneros was admitted and treated for status epilepticus at Memorial Medical Center of Las Cruces from June 5, 2021 to June 8, 2021 and non-epileptic spells at Presbyterian Hospital from June 8, 2021 to June 12, 2021.
39. On June 12, 2021, Mr. Cisneros returned to CNMCF.
40. Despite Mr. Cisneros documented history of suicide attempts and mental health disorders, NMCD did not screen Mr. Cisneros for suicide risk or mental health status.
41. NMCD did not take the necessary precautions to monitor Mr. Cisneros.
42. The records regarding Mr. Cisneros' June 12, 2021, intake are missing and / or were destroyed.
43. On June 12, 2021, Mr. Cisneros was told to stop taking Remeron until he was evaluated by Dr. Vera.
44. The medical records regarding this decision and Dr. Vera's evaluation were missing and / or were destroyed.
45. On June 14, 2021, Mr. Cisneros was found hanged in his cell.

46. EMS responders noted that Mr. Cisneros was in asystole. EMS responders shocked Mr. Cisneros twice and intubated him.

47. Mr. Cisneros was taken by ambulance from NMCD to the University of New Mexico Hospital.

48. At the emergency room, Mr. Cisneros was shocked three times. He was assessed to have multiorgan failure due to prolonged hypoxia with metabolic derangements, Acute Kidney Injury, shock liver, anion gap metabolic acidosis, diffuse cerebral swelling consistent with global ischemic / hypoxic encephalopathy, Acute Hypercapnic Respiratory Failure with aspiration pneumonia versus pneumonitis, suspected pneumatosis of the lower abdomen.

49. Mr. Cisneros died at 7:10 a.m. on June 15, 2021.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

50. NMCD Defendants have a duty to reasonably and prudently operate the medical facility within CNMCF.

51. NMCD maintained authority over its contractors, including those named in this Complaint.

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

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

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

55. NMCD Defendants, by and through its employees, staff and agents, knew of

Mr. Cisneros's medical history, mental health history, and chronic suicide risk, and recklessly refused to provide necessary and proper medical care.

56. Given Mr. Cisneros's mental health history, Wexford should have known or knew and should have trained its agents and employees to care for such patients at chronic risk for suicide, and to make the appropriate recommendations, treatment plans, housing plans and referrals.

57. Given CNMCF's history of suicide among inmates, CNMCF should have known or knew and should have trained its agents and employees to recognize and intervene in light of the suicidal risk factors displayed by Mr. Cisneros.

58. All Defendants, including as of yet unidentified John Doe Defendants, individually knew of Mr. Cisneros's medical history, mental health history, and chronic suicide risk, and recklessly refused to provide necessary and proper medical care.

59. NMCD understands and recognizes that failure to treat a patient with Mr. Cisneros's medical history, mental health history, and chronic suicide risk, constitutes recklessness under New Mexico law.

60. NMCD had full authority to enforce the PSC.

61. NMCD had at all times relevant to this Complaint the authority to compel Wexford to treat patient with Mr. Cisneros's medical history and mental health history.

62. NMCD has obtained substantial budgets for treatment of inmates with Mr. Cisneros's medical history and mental health history.

63. NMCD pays millions of dollars to Wexford for treatment of inmates with Mr. Cisneros's medical history, mental health history, and chronic suicide risk.

64. NMCD recklessly chose not to exercise any control over the manner in which Wexford, acting by and through its employees, staff and agents, performed its duties leading to the suicide of Mr. Cisneros.

65. NMCD recklessly chose not to exercise any control over the manner in which Wexford performed their duties leading to Mr. Cisneros's suicide.

66. As a result of the gross neglect and reckless disregard of Mr. Cisneros's medical history and mental health history, Mr. Cisneros died.

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

67. The facts set forth above illustrate gross negligence and a reckless disregard for the health and safety of Mr. Cisneros by Wexford, acting through its employees, staff and agents.

68. The gross negligence and recklessness of Wexford, acting through its employees, staff and agents led to the death of Mr. Cisneros.

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

70. Wexford TechProp was over 830 pages long.

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

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

73. Wexford TechProp did not mention punitive damages.

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

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

76. The PSC was 65 pages in length.

77. The PSC did not mention the Tort Claims Act.
78. The PSC did not mention the word “tort.”
79. The PSC did not mention punitive damages.
80. The PSC did not provide for Tort Claims Act protection for Wexford or their respective employees, staff, and agents.
81. Tort Claims Act protection for Wexford and/or their respective employees, staff and agents was not negotiated, bargained for, or agreed upon.
82. Protection from punitive damages for Wexford, and/or their respective employees, staff and agents was not negotiated, bargained for, or agreed upon.
83. The PSC was entered freely by Wexford on or about October 18, 2019.
84. The PSC was in effect at times relevant to this Complaint.
85. Wexford had the legal capacity to enter the PSC.
86. Wexford was legally competent to enter the PSC.
87. There was mutual assent on the part of Wexford and NMCD in the negotiation and execution of the PSC.
88. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the PSC.
89. The PSC was not vague.
90. The PSC was not oppressive to Wexford.
91. The PSC was not void as a matter of public policy.
92. Wexford is and was at all relevant times bound by the terms of the PSC.
93. The PSC is fully enforceable against Wexford as written and executed.

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

95. 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.

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

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

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

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

100. 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.

101. 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.

102. 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.

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

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

105. 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 PSC.

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

107. 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.

108. Wexford Defendants, by and through its employees, staff and agents, knew of Mr. Cisneros's medical history and mental health history and failed to provide necessary and proper medical care to protect Mr. Cisneros's health and safety.

D. FACTS COMMON TO ALL DEFENDANTS

109. Defendant Medical Providers knew of Mr. Cisneros's medical history, mental health history, and chronic suicide risk, recklessly refused to provide necessary and proper medical care and medical supervision.

110. All Defendants collectively knew of Mr. Cisneros's medical history, mental health history, and chronic suicide risk, and recklessly refused to provide necessary and proper medical care and medical supervision.

111. All Defendants, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of Mr. Cisneros's medical history, mental health history, and chronic suicide risk, and with wanton, recklessly refused to provide necessary and proper medical care and medical supervision.

112. All Defendants knew that Mr. Cisneros needed immediate treatment and supervision to avoid a suicide attempt.

113. All Defendants knew that Mr. Cisneros's chronic mental health was worsening.

114. All Defendants knew that the failure to properly supervise and treat Mr. Cisneros' medical history, mental health history, and chronic suicide risk, constitutes recklessness under New Mexico law.

115. All Defendants knew that the failure to properly supervise and treat Mr. Cisneros' medical history, mental health history, and chronic suicide risk, constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

116. All Defendants knew that the failure to properly supervise and treat Mr. Cisneros' medical history, mental health history, and chronic suicide risk, constitutes gross negligence and reckless neglect of the medical needs of inmates under New Mexico law.

117. All Defendants were complicit and acquiesced in the denial of proper medical care and supervision to Mr. Cisneros.

118. All Defendants conspired together to deny Mr. Cisneros necessary and proper medical care leading to the death of Mr. Cisneros.

COUNT I: NEGLIGENCE (Wexford)

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

120. In undertaking the diagnosis, care and treatment of Mr. Cisneros, Defendant Medical Providers, 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.

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

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

- a. Failing to provide adequate staff, adequately paid staff, and adequately trained staff at CNMCF to care for inmates such as Mr. Cisneros, with the full knowledge that such inadequate staffing practices would place inmates such as Mr. Cisneros at risk for injuries;

- b. Negligently hiring, retaining and supervising staff at CNMCF, with the full knowledge that such negligent staffing practices would place inmates such as Mr. Cisneros at risk for injuries;
- c. Failing to provide proper suicide prevention planning, suicide prevention monitoring, suicide prevention policies and procedures, suicide prevention equipment, and suicide prevention training, so that Mr. Cisneros was allowed to commit suicide without proper monitoring, prevention and treatment;
- d. Failing to provide and implement proper care plans that would adequately meet Mr. Cisneros's needs, including his risk for suicide;
- e. Allowing Mr. Cisneros to remain unattended and unmonitored despite Mr. Cisneros's known risk for suicide;
- f. Failing to provide a safe environment;
- g. Failing to ensure that Mr. Cisneros received adequate supervision and assistance devices to prevent suicide;
- h. Failing to have adequate and effective policies, procedures, staff and equipment to adequately supervise Mr. Cisneros;
- i. Failing to provide services to attain or maintain the highest practicable physical, mental and psycho-social well-being of Mr. Cisneros in accordance with a written plan of care;
- j. Failing to adequately monitor Mr. Cisneros;

123. These acts and failures to act by Defendants and their employees, agents, apparent agents and contractors, were willful, wanton and in reckless disregard for the safety and

well-being of Mr. Cisneros. This is particularly so in regard to allowing Mr. Cisneros to commit suicide without properly correcting the care plan or attending to the suicide risk and allowing Mr. Cisneros to remain unattended despite his behavioral health history, suicide attempts and high risk of suicide.

124. All acts or omissions done by Defendants and their employees, contractors, agents or apparent agents, were done within the scope of those persons' employment, contract, agency or apparent agency.

125. All acts complained of herein were authorized, participated in, or ratified by Defendants, or their administrators, managers, officers or directors or shareholders.

126. As a proximate result of the acts or omissions of Defendants, and their willful, wanton and reckless misconduct, Mr. Cisneros: (1) was allowed to commit suicide at CNMCF on June 14, 2021; (2) Mr. Cisneros's wrongful death was the result of the misconduct of Defendants.

COUNT II: NEGLIGENCE (NMCD DEFENDANTS)

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

128. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

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

130. 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. Cisneros.

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

132. NMCD determined not to enforce the NCCHC standards.

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

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

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

136. NMCD’s indifference to national standards for the constitutionally acceptable medical care of inmates and NMCD’s allowance of CCH to provide services far below constitutional standards led directly to the gross medical neglect and reckless withholding of medical care and the consequent harm to Mr. Cisneros.

137. 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.

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

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

140. 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.

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

142. NMCD's action and inactions were grossly negligent and reckless.

143. As a result of the foregoing, Mr. Cisneros died.

COUNT III: MEDICAL MALPRACTICE WEXFORD

144. Plaintiff realleges Paragraphs 1 through 143 pursuant to NMRA Rule 1-010©.

145. In undertaking the diagnosis, care and treatment of Mr. Cisneros, Defendants have a duty to possess and apply the knowledge, skill, and care that is used by reasonably well-qualified healthcare providers in the local community.

146. Defendants breached their duties and were grossly negligent and reckless in the management of Mr. Cisneros' health and safety.

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

- a. Failure to evaluate, treat and manage Mr. Cisneros' severe psychiatric condition;
- b. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management Mr. Cisneros's severe psychiatric condition;
- c. Failure to create an appropriate treatment plan;
- d. Failure to implement an appropriate treatment plan;
- e. Failure to take the reasonable steps to acquire proper treatment of Mr. Cisneros;
- f. Failure to refer Mr. Cisneros to appropriate specialists;

- g. Failure to timely transfer Mr. Cisneros to an appropriate psychiatric facility or behavioral health facility;
- h. Failure to protect and preserve the health of Mr. Cisneros; and
- i. Failure to implement any suicide prevention whatsoever, despite Mr. Cisneros's chronic suicide risk.

148. Defendants' failure to assess, treat and manage Mr. Cisneros' severe psychiatric condition was reckless, wanton and in utter disregard for the safety and welfare of Mr. Cisneros.

149. The negligent and reckless acts and omissions of Defendants were the direct and proximate cause of Mr. Cisneros' wrongful death.

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

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

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

152. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

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

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

155. NMCD is the contracting party to the PSC entered into between NMCD and Wexford November 1, 2019.

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

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

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

159. Wexford's medical staff at GCCF lacked sufficient expertise to assess, treat and manage Mr. Cisneros's health conditions.

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

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

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

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

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

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

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

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

168. Such conduct amounts to negligence in the treatment of Mr. Cisneros.

169. The actions and inactions of NMCD for the medical care of Mr. Cisneros were grossly negligent and reckless.

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

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

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

173. 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.

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

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

176. NMCD Defendants have failed to enforce the following provisions of the PSC:

- 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.

177. 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.

178. 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. Cisneros.

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

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

181. 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.

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

183. The failures of NMCD Defendants led to the death of Mr. Cisneros.

184. As a result of the foregoing, Mr. Cisneros died.

COUNT V: NEGLIGENT HIRING, TRAINING AND SUPERVISION (Wexford)

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

186. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates with psychiatric illness, mood disorders, and chronic risk for suicide.

187. 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. Cisneros's mental health and chronic risk of suicide.

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

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

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

191. The ACA and NCCHC set mandatory minimum standards for training of both medical personnel and non-medical personnel in the provision of medical services in a prison.

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

193. Wexford has violated numerous ACA and NCCHC minimum mandatory standards related to hiring, training and supervision.

194. The failures of Defendants Wexford led to the death of Mr. Cisneros.

195. Wexford 's negligent hiring, training and supervision were the proximate cause of Mr. Cisneros's death for which Mr. Cisneros is entitled to damages including, but not limited to, wrongful death, pain and suffering, and severe psychological and emotional distress, and punitive damages.

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

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

COUNT VI: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (Wexford)

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

199. Wexford Defendants intentionally denied Mr. Cisneros proper and necessary behavioral health care and proper supervision given Mr. Cisneros' mental health history and chronic suicide risk.

200. Defendants intentionally denied Mr. Cisneros access to the appropriate specialists for his behavioral conditions.

201. The conduct of Wexford Defendants was extreme, outrageous, and intentional and in deliberate disregard for Mr. Cisneros's mental health.

202. Mr. Cisneros suffered severe emotional distress as a result of the conduct of Defendants.

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

COUNT VII: CIVIL CONSPIRACY TO DENY MEDICAL CARE (Wexford)

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

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

206. As a result of said conspiracy, Mr. Cisneros's suffered severe physical and emotional distress as a result of the conduct of NMCD Defendants and Defendant Wexford.

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

208. Plaintiff is entitled to damages, including punitive damages, against Wexford.

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

210. Mr. Cisneros is entitled to punitive damages against Wexford Defendants.

COUNT VIII: RESPONDEAT SUPERIOR AND AGENCY (Wexford)

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

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

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

COUNT IX: WRONGFUL DEATH (ALL DEFENDANTS)

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

215. Defendants, acting through their employees, administrator, agents, servants, representatives, officers, directors, designees, physicians, counselors, nurses, nurse's aides, and/or contractors, who were acting within the scope of their employment, agency, apparent agency or contract, were negligent in the care and services they provided to Mr. Cisneros.

216. Defendants failed to use ordinary care in providing the appropriate treatment and care that a reasonable and prudent correctional facility would have provided under the same or similar circumstances.

217. Defendants breached their duty by failing to ensure that Mr. Cisneros received proper precautions to prevent suicide, and adequate and proper supervision in an appropriate manner.

218. As a direct and proximate result of Defendants' actions and/or inactions, Mr. Cisneros suffered physical and psychological pain, suffering and ultimately death.

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

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

220. The injuries and damages suffered by Mr. Cisneros were proximately caused by wanton, willful and reckless actions, and inactions all Defendants.

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

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

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

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

225. Mr. Cisneros is entitled to punitive damages against Wexford Defendants.

COUNT XI: PUNITIVE DAMAGES (Wexford)

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

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

WHEREFORE, Plaintiff requests judgment as follows:

A. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to Mr. Cisneros;

B. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by this Court as adequate for Wexford Defendants' intentional infliction of emotional distress;

C. Punitive damages in an undetermined amount against Wexford;

D. Costs incurred by Mr. Cisneros, including pre-judgment and post-judgment interest; and

E. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

GUEBERT GENTILE & PIAZZA, P.C.

By /s/ Elizabeth M. Piazza
Terry R. Guebert
Robert Gentile
Elizabeth M. Piazza
Julia H. Purdy
P.O. Box 93880
Albuquerque, NM 87109
(505) 823-2300
tguebert@guebertlaw.com
rgentile@guebertlaw.com
epiazza@guebertlaw.com
jpurdy@guebertlaw.com

and

COLLINS & COLLINS, P.C.

By /s/ Parrish Collins
Parrish Collins
P. O. Box 506
Albuquerque, NM 87103
505-242-5958
parrish@collinsattorneys.com

Attorneys for Plaintiff

COLLINS & COLLINS, P.C.

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

June 17, 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

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

Jim Reinhart
Director of Corporate Operations
Wexford Health Sources, Inc.
Via e-mail only to JReinhart@WexfordHealth.com

RE: Jonathan Sisneros Estate v. Central New Mexico Correctional Facility, New Mexico Corrections Department, the State of New Mexico, Wexford Health Services, et. al.,
Date of Incident: June 15, 2021, suicide

Gentlemen:

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 inaction of New Mexico Corrections Department, Central New Mexico Correctional Facility (CNMCF), Wexford Health Sources, Inc. (and their employees, staff contractors and other agents) in their negligence related to their failure to provide proper supervision and medical care to Mr. Jonathan Sisneros. Said negligence resulted in the death of Mr. Sisneros on June 15, 2021, at the University of New Mexico Hospital.

Facts:

Mr. Sisneros had been airlifted for emergency medical attention to Presbyterian Hospital in Albuquerque on June 9, 2021, following a grand mal seizure. His history of grand mal seizures was well-known and had been manifest since childhood and for which he required medical

Jonathan Sisneros Estate
Tort Claims Notice
June 17, 2021

services which were denied for the duration of his incarceration with NMCD. Additionally, he also had a long history of mental health issues including a prior attempted suicide while and inmate at NMCD. He remained at Presbyterian Hospital until June 15, 2021. On that date, he was transferred to the Central New Mexico Correctional Facility (CNMCF). Mr. Sisneros should have been receiving a high level of medical care following his release from Presbyterian including but not limited to monitoring.

On June 15, 2021 Mr. Sisneros hung himself at the Central New Mexico Correctional Facility. He was found unresponsive in his cell and was taken, by emergency transport, to the University of New Mexico Hospital where he was pronounced dead shortly thereafter. The gross negligence displayed by the actions and inaction of departmental staff contributed directly to the death of Mr. Sisneros and constitute deliberate indifference to his medical conditions.

Preservation of Evidence:

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

1. Any and all log files for the duration of Mr. Sisneros's incarceration at CNMCF.
2. The full and complete inmate file for Mr. Sisneros.
3. All booking and intake documents for Mr. Sisneros.
4. All medical records obtained or otherwise received for Mr. Sisneros.
5. All requests by NMCD, its staff, agents, or contractors, for Mr. Sisneros's medical records from any outside medical providers.
6. All correctional officer daily logs for the duration of Mr. Sisneros'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 his removal from the facility to UNMH.
 - ii. All video footage from the hallways leading to and from his cell for a period of 72 hours prior to his removal from the facility to UNMH on or about June 15, 2021.
 - iii. Videos of any physical location transfers to other areas of the detention facility.

Jonathan Sisneros Estate
Tort Claims Notice
June 17, 2021

- 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 his removal from the facility to UNMH on or about June 15, 2021.
8. All recorded calls involving Mr. Sisneros 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, reports to the Office of the Medical Investigator and any other writing related to or associated with the death of Mr. Sisneros.

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

COLLINS & COLLINS, P.C.

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

June 18, 2021

AMENDED NOTICE OF TORT CLAIM

New Mexico Corrections Department
P. O. 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

Jim Reinhart
Director of Corporate Operations
Wexford Health Sources, Inc.
Via e-mail only to JReinhart@WexfordHealth.com

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Date of Incident: June 15, 2021, suicide

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Jonathan Cisneros Estate
Tort Claims Notice
June 17, 2021

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Tort Claims Notice
June 17, 2021

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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, June 18, 2021 10:17 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 017107

Result: OK

End Time: Fri 18 Jun 2021 10:17:13

File Name: 6.18.21 Amended TCN and spoliation to NMCD.pdf

Category: Sending Jobs

Result Job Type Address

OK FAX 5058272969

Thanks,

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

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

Sent: Friday, June 18, 2021 10:16 AM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 017106

Result: OK

End Time: Fri 18 Jun 2021 10:15:58

File Name: 6.18.21 Amended TCN and spoliation to NMCD.pdf

Category: Sending Jobs

Result Job Type Address

OK FAX 5058278533

Thanks,