

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

EUGENIO S. MATHIS, as personal representative
of THE ESTATE OF FREDDIE MIRABAL,
deceased,

Plaintiff,

v.

No. D-101-CV-2021-01851

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, and agents of Wexford
Health Sources, Inc., State of New Mexico and New
Mexico Corrections Department, respectively).

Case assigned to Sanchez-Gagne, Maria

Defendants.

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

COMES NOW, the PLAINTIFF, Eugenio S. Mathis, as personal representative of the
Estate of Freddie Mirabal, by and through his attorneys COLLINS & COLLINS, P.C. (Parrish
Collins) and SANDOVAL FIRM (Richard A. Sandoval), and for his cause of action states as
follows:

I. PARTIES

A. *PLAINTIFF*

1. FREDDIE MIRABAL, deceased, was at all times relevant to this complaint, a
New Mexico Corrections Department (“NMCD”) inmate.

2. Mr. Mirabal, at the time of the original incident as set forth below, was an
inmate at Lea County Correctional Facility (“LCCF”), a NMCD facility.

3. Mr. Mirabal, at the time of his death, was an NMCD inmate housed at Lea County Correctional Facility prior to transfer to Lovelace in Albuquerque where he passed away.

B. NEW MEXICO CORRECTIONS DEPARTMENT

4. DEFENDANT NMCD is an entity of the State of New Mexico.

5. LCCF is operated by NMCD.

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

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

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

9. NMCD DEFENDANTS have a duty to provide for the health and safety for inmates under its custody.

10. NMCD governs LCCF, while independent contractors carry out discrete duties at the discretion and contractual direction 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 individually named and John Doe named employees, staff and agents will be collectively referred to as Wexford DEFENDANTS.

II. JURISDICTION AND VENUE

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

17. A Tort Claims Notice was timely sent on 5/14/2021.

18. Mr. Mirabal is deceased so there is no issue of exhaustion of remedies 42 U.S.C.A. § 1997e or 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' employees, staff and agents John Does 1-10 pursuant to NMSA § 38-3-1 (A) and 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 Mr. Mirabal'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. FACTS


23. At times relevant to this complaint, Mr. Mirabal was a 57-year-old man.

24. Mr. Mirabal had a medical history of essential hypertension, liver cirrhosis, hepatitis C, hepatic encephalopathy, diabetes mellites 2, obesity, and a right inguinal hernia (hereinafter collectively referred to as “PLAINTIFF’s medical condition”).

25. Mr. Mirabal was a known case of hepatitis C, liver cirrhosis and type 2 diabetes mellitus who tested positive for Covid-19 infection on 01/14/2021. However, the corresponding swab report and details of treatment advised for the Covid-19 infection were not provided to Mr. Mirabal’s estate pursuant to lawful request for medical records.

26. Providers should be ready to consider hepatic encephalopathy as a cause of cognitive dysfunction and symptoms in patients with cirrhosis, and either work up the patient to make a formal diagnosis or, if necessary, be prepared to refer such patients to specialist care for further assessment. This prompt workup and/or referral should allow for early initiation of appropriate management, which might reduce the risk of hospitalization and thus reduce healthcare costs.


27. Mr. Mirabal was noted to have features of hepatic encephalopathy in the setting of hepatitis C infection and decompensated liver cirrhosis from 01/22/2021 to 01/24/2021 as noted below:

28. On **01/22/2021**, Mr. Mirabal was noted to be screaming and yelling at staffs. He denied having any problems. Provider could not obtain the vital signs. 

29. On the same day (01/22/2021), Mr. Mirabal was **seen then by the provider in the COVID unit** as the provider was **told by the security that Mr. Mirabal was confused and**

defecating on the floor. On checking his vital signs, he had a temperature of 98° F, pulse rate of 93 beats per minute, respiratory rate of 20 breaths per minute, and blood pressure of 166/89 mmHg.

30. On examination, he appeared confused. A respiratory examination revealed good breath sounds. Provider was able to get Mr. Mirabal's attention. Mr. Mirabal's speech was delayed but he was able to have eye contact with the provider. It was assessed that he had decompensatory liver cirrhosis with history of hepatic encephalopathy. Provider discussed with Mr. Mirabal the importance of taking Lactulose and Mr. Mirabal took 1.5 capsule of Lactulose.

He was advised to take Lactulose daily. (*Illegible notes*).  Signature/Title

31. On 01/23/2021, Mr. Mirabal was noted screaming and yelling but was not aggressive in any way. He was oriented only to the name and place.

32. On 01/24/2021, Mr. Mirabal was found naked sitting on his hands and knees on a blanket on the floor. He refused to take his medications and breakfast. Provider was unable to obtain Mr. Mirabal's vital signs. His skin was cool, dry, and intact. His blanket had feces and urine on it, and he refused to get up to get it replaced with a clean blanket. He responded to his name but did not allow the door to be opened. Food and Lactulose were offered but there was no response from him.


33. On review of available medical records, we note interim medical records between 01/25/2021 and 01/29/2021 were not available for our review.

34. Hepatic encephalopathy is a reversible syndrome of impaired brain function occurring in patients with advanced liver diseases. Hepatic encephalopathy produces a wide spectrum of nonspecific neurological and psychiatric manifestations such as those illustrated by Mr. Mirabal as set forth above including personality changes, inappropriate behavior, acute

confused state with agitation or somnolence, progressive disorientation in time and space, somnolence, stupor and, finally, coma.

35. On 01/29/2021, Mr. Mirabal was taken to the Lovelace Medical Center secondary to his clinical deterioration. He was examined by Harkesh Arora, M.D. for the chief complaint of altered mental status and fever. He was diagnosed with acute hepatic encephalopathy likely secondary to Hepatitis C induced liver cirrhosis and possible use of alcohol in the past, possible spontaneous bacterial peritonitis, acute on chronic renal failure and possibly a component of hepatorenal syndrome with hypernatremia, transaminitis and alcoholic liver hepatitis, macrocytosis, thrombocytopenia likely secondary to cirrhosis of the liver, and decubitus pressure injuries. Mr. Mirabal's nasopharyngeal swab that was collected at 1930 hours, tested positive for Severe Acute Respiratory Syndrome Coronavirus 2 (SARS CoV-2).

36. On 01/30/2020, Mr. Mirabal was diagnosed with acute respiratory failure due to the Covid-19 infection.

37. Despite the obvious onset of severe symptoms on January suggesting hepatic encephalopathy, and  having clear knowledge of Mr. Mirabal's hepatic encephalopathy, Mr. Mirabal was not referred to the ER until 01/29/2021.

38. Wexford, acting through its employees, staff and agents, recklessly failed to refer Mr. Mirabal to the ER in a timely manner.

39. As always in cases involving NMCD, critical missing records were missing from 01/25/2021 to 01/29/2021.

40. As a result of NMCD's and Wexford's grossly negligent medical care and reckless indifference to Mr. Mirabal's rapidly declining health condition as evidence by the

severe symptoms indicative of hepatic encephalopathy, Mr. Mirabal died of complications from Acute Metabolic encephalopathy.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

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

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

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

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

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

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

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

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

49. NMCD routinely ignores medical grievances.

50. NMCD routinely destroys medical grievances.

51. NMCD routinely fails to process medical grievances correctly.

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

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

54. During the term of the GSC, NMCD did not find in favor of a single NMCD inmate housed at LCCF.

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

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

57. DEFENDANT STEVE MADRID is instrumental in the denial of medical grievances.

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

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

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

61. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of Mr. Mirabal's history of PLAINTIFF's medical condition and with wanton, willful and deliberate indifference ignored Mr. Mirabal'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. Mirabal.

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

63. DWAYNE SANTISTEVAN knew of Mr. Mirabal's history of PLAINTIFF's medical condition and with wanton, willful and deliberate indifference ignored Mr. Mirabal's medical grievances.

64. NMCD understands and recognizes that failure to treat PLAINTIFF's medical condition constitutes recklessness under New Mexico law.

65. NMCD understands and recognizes that failure to treat PLAINTIFF's medical condition constitutes deliberate indifference under federal law.

66. NMCD had full authority to enforce the GSC.

67. NMCD had at all times relevant to this COMPLAINT the authority to compel its Wexford to treat PLAINTIFF's medical condition.

68. NMCD has obtained substantial budgets for treatment of PLAINTIFF's medical condition.

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

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

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

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

73. 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.

74. 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.

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

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

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

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

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

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

80. 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.

81. Wexford TechProp was over 830 pages long.

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

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

84. Wexford TechProp did not mention punitive damages.
85. Wexford TechProp did not mention or request Tort Claims Act protection for WEXFORD or its employees, staff and agents.
86. Professional Services Contract (“PSC”) # 20-770-1200-0043 was executed by NMCD and Wexford on or about October 18, 2019.
87. The PSC was 65 pages in length.
88. The PSC did not mention the Tort Claims Act.
89. The PSC did not mention the word “tort.”
90. The PSC did not mention punitive damages.
91. The PSC did not provide for Tort Claims Act protection for Wexford, MHM or their respective employees, staff and agents.
92. Tort Claims Act protection for Wexford and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
93. Protection from punitive damages for Wexford, and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
94. The PSC was entered freely by Wexford on or about October 18, 2019.
95. The PSC was in effect at times relevant to this Complaint.
96. Wexford had the legal capacity to enter the PSC.
97. Wexford was legally competent to enter the PSC.
98. There was mutual assent on the part of Wexford and NMCD in the negotiation and execution of the PSC.
99. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the PSC.

100. The PSC was not vague.
101. The PSC was not oppressive to Wexford.
102. The PSC was not void as a matter of public policy.
103. Wexford is and was at all relevant times bound by the terms of the PSC.
104. The PSC is fully enforceable against Wexford as written and executed.
105. By the terms of the PSC, Wexford is an independent contractor performing professional services for the Agency.
106. 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.

107. By the terms of Paragraph 9 of the PSC, Wexford is an independent contractor performing general services for the Agency.
108. By the terms of Paragraph 9 of the PSC, Wexford is not an employee of the State of New Mexico.
109. By the terms of Paragraph 9 of the PSC, Wexford employees and agents are independent contractors.
110. By the terms of Paragraph 9 of the PSC, Wexford employees and agents are not employees of the State of New Mexico.
111. 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.

112. 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.

113. 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.

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

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

116. 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.

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

118. 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.

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

D. FACTS COMMON TO ALL DEFENDANTS

120. DEFENDANT DOCTORS knew of Mr. Mirabal's history of PLAINTIFF's medical condition and with wanton, willful and deliberate indifference ignored Mr. Mirabal's medical grievances and deliberately refused to provide necessary and proper medical care.

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

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

123. ALL DEFENDANTS knew that Mr. Mirabal was in need of immediate treatment to control Mr. Mirabal's chronic PLAINTIFF's medical condition.

124. ALL DEFENDANTS knew that Mr. Mirabal's chronic PLAINTIFF's medical condition was worsening.

125. ALL DEFENDANTS knew that untreated chronic PLAINTIFF's medical condition could lead to cirrhosis could lead to liver damage to untreated PLAINTIFF's medical condition positive inmates.

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

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

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

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

130. ALL DEFENDANTS conspired together to deny Mr. Mirabal necessary and proper medical care leading to the physical pain, severe emotional and psychological pain and suffering, severe and permanent physical injuries from complications from untreated and improperly treated Mr. Mirabal's chronic PLAINTIFF's medical condition which resulted in Cirrhosis of the liver.

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

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

132. In undertaking the diagnosis, care and treatment of Mr. Mirabal, 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.

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

134. 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. Mirabal's medical condition;

c. Failure to take the reasonable steps to acquire proper treatment of Mr. Mirabal;

d. Failure to refer Mr. Mirabal to appropriate specialists;

e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of PLAINTIFF's medical condition;

f. Failure to provide Mr. Mirabal with necessary and proper pain management; and

g. Failure to protect and preserve the health of Mr. Mirabal.

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

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

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

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

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

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

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

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

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

143. 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. Mirabal.

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

145. NMCD determined not to enforce the NCCHC standards.

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

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

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

149. 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, intentional and deliberate withholding of medical care and the consequent harm to Mr. Mirabal.

150. 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.

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

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

153. 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.

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

155. NMCD’s action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of Mr. Mirabal.

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

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

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

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

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

160. 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. Mirabal's injuries.

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

162. CCH's medical staff at LCCF lacked sufficient expertise to assess, treat and manage Mr. Mirabal's health conditions.

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

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

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

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

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

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

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

170. 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.

171. 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. Mirabal's injuries.

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

173. 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. Mirabal's injuries.

174. 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.

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

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

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

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

179. 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.

180. As such, NMCD has negligently operated LCCF, a public facility in which it incarcerated Mr. Mirabal.

181. NMCD has created a risk to all inmates including Mr. Mirabal at LCCF, as all inmates are owed adequate healthcare.

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

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

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

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

185. 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.

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

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

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

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

190. By failing to either: (1) properly treat Mr. Mirabal's medical conditions, or (2) properly refer Mr. Mirabal to be seen by a physician who could effectively treat Mr. Mirabal, Wexford DEFENDANTS breached their duty to medically treat Mr. Mirabal in a reasonably prudent manner.

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

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

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

194. 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.

195. Wexford DEFENDANTS failed to properly address Mr. Mirabal's medical condition.

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

197. Such conduct amounts to negligence in the treatment of Mr. Mirabal.

198. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding the medical care of Mr. Mirabal and inmates with similar health conditions within the facility.

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

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

201. 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. Mirabal's multiple medical conditions, including PLAINTIFF's medical condition and related health conditions.

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

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

204. As a result of the foregoing, PLAINTIFF has suffered damages and injuries including, but not limited to, physical injuries, pain and suffering, severe psychological and emotional distress and ultimate death, for which he is entitled to damages.

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

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

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

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

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

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

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

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

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

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

214. Wexford's medical staff at LCCF lacked sufficient expertise to assess, treat and manage Mr. Mirabal's health conditions.

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

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

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

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

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

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

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

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

223. Such conduct amounts to negligence in the treatment of Mr. Mirabal.

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

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

226. CCH has violated numerous provisions of ACA and NCCHC.

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

228. 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.

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

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

231. 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.

232. 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.

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

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

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

236. 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.

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

238. The failures of NMCD DEFENDANTS led to serious and permanent harm to Mr. Mirabal.

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

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

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

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

242. 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. Mirabal's PLAINTIFF's medical condition.

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

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

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

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

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

248. Wexford's negligent hiring, training and supervision were the proximate cause of Mr. Mirabal'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.

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

250. Wexford had a duty to allow Mr. Mirabal's medical providers to make referrals to specialist.

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

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

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

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

255. 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.

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

257. PLAINTIFF is entitled to punitive damages against Wexford.

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

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

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

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

261. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of PLAINTIFF's medical condition.

262. 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. Mirabal's PLAINTIFF's medical condition and related health conditions.

263. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of PLAINTIFF's medical condition.

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

265. Wexford established, but failed to enforce, any standards for medical care.

266. Wexford failed to enforce the GSC.

267. Wexford failed to exercise supervisory authority inherent in the grievance system.

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

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

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

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

**COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Wexford)**

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

273. Wexford DEFENDANTS intentionally denied Mr. Mirabal proper and necessary medical care for Mr. Mirabal's PLAINTIFF's medical condition.

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

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

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

277. Mr. Mirabal suffered severe emotional distress as a result of the conduct of DEFENDANTS.

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

**COUNT IX: CIVIL CONSPIRACY TO DENY MEDICAL CARE
(Wexford)**

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

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

281. As a result of said conspiracy, Mr. Mirabal suffered severe physical and emotional distress as a result of the conduct of NMCD and Wexford Defendants.

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

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

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

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

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

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

287. Wexford is responsible for the injuries and damages to Mr. Mirabal under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

288. Wexford is responsible for the injuries and damages to Mr. Mirabal under the doctrine of agency for the conduct of its employees, staff and agents.

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

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

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

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

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

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

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

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

**COUNT XII: WRONGFUL DEATH
(ALL DEFENDANTS)**

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

297. The actions and inactions of the NMCD, Wexford Health Sources, LLC, and their respective employees, staff and agents, led to the wrongful death of Freddie Mirabal.

298. PLAINTIFF is entitled to recovery of damages for the wrongful death of Freddie Mirabal, including all physical injuries, pain and suffering, and severe psychological and emotional distress preceding his death.

299. PLAINITFF is entitled punitive damages against Wexford.

COUNT XIII: PUNITIVE DAMAGES
(Wexford)

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

301. 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. Mirabal , 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. Mirabal;

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 PLAINTIFF, including pre-judgment and post-judgment interest; and

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

Respectfully Submitted:

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