

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

VINCENT MARTIN,

Plaintiff,

v.

No. D-101-CV-2021-02252

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

Case assigned to Sanchez-Gagne, Maria

Defendants.

**COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS**

**COMES NOW** Plaintiff, VINCENT MARTIN, by and through his attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and GUEBERT GENTILE & PIAZZA, P.C. (Terry R. Guebert, Robert F. Gentile and Elizabeth Piazza), and for his cause of action states as follows:

**I. PARTIES**

**A. PLAINTIFF**

1. VINCENT MARTIN (“Mr. Martin”) was at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.
2. Mr. Martin, 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. Martin is currently residing in the Lea County Correctional Facility (LCCF) in Hobbs, New Mexico 88244.

**B. NEW MEXICO CORRECTIONS DEPARTMENT**

4. DEFENDANT NMCD and LCCF are entities 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 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 safety and security for those it incarcerates.

10. NMCD governs LCCF, while independent contractors carry out discrete duties at the discretion of NMCD, including medical care.

11. NMCD entered into a contract with Wexford for the provision of medical services to inmates in NMCD facilities under Professional Services Contract (“PSC”) # 20-770-1200-0043.

12. The PSC was, upon information and belief, executed in Santa Fe, New Mexico.

**C. WEXFORD HEALTH SOURCES, INC.**

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

16. WEXFORD, its individually named and 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 Lea County, New Mexico.

18. A Tort Claims Notice was timely sent on June 6, 2020. **PEX 1**

19. Mr. Martin asserts that he exhausted all available administrative remedies as required by 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11.

20. Jurisdiction and venue are proper over WEXFORD and its employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A).

21. 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.

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

23. This Court has jurisdiction over the subject matter of Mr. Martin'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).

24. 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*

25. Plaintiff, Vincent Martin, was at times relevant to this complaint a 57-year-old male.

26. Mr. Martin had a history intravenous drugs usage, asthma/emphysema, diabetes (Uncontrolled DM II), peripheral neuropathy, abdominal hernias, and a minor stroke (collectively referred to as “Mr. Martin’s medical conditions”).

27. On 12/19/2019, during routine follow-up at NMCD, Mr. Martin was noted to have blood pressure of 141/80, hyperlipidemia, and peripheral neuropathy. He also had bilateral feet numbness. His labs revealed WBC 10.79 and HbA1C was (72).

28. On 04/13/2020, Mr. Martin was ordered with Bactrim DS 2 tablet twice daily per oral for 14 days.

29. There are no medical records from April 13, 2020 to May 4, 2020.

30. On 05/04/2020, Mr. Martin had complaints of flank pain and was treated with empiric Ciprofloxacin for suspecting pyelonephritis. Labs were noted with WBC of approximately 15000 per cubic millimeter.

31. On 05/07/2020, Mr. Martin presented sudden overnight swelling of right-side abdomen. He felt uncomfortable.

32. On 05/08/2020, Mr. Martin presented to ER in the UNM Hospitals-University Hospital for the complaint of thoracic back pain.

33. At UNMH, Mr. Martin was diagnosed with T11 osteomyelitis, tachycardia, and hypoxemia.

34. On 05/09/2020, Mr. Martin was admitted to UNM Hospital for the management of thoracic pain under the care of Dara White, M.D., and Stuart Haigler, M.D.

35. Mr. Martin reported to UNMH medical personnel that he had suffered 5 months of progressively worsening thoracic back pain.

36. Mr. Martin reported that he had been treated with two rounds of empiric antibiotics without improvement.

37. Mr. Martin also reported that he received three rounds of injection of steroids and Trigger Point injections to relieve his pain.

38. On 05/11/2020, Mr. Martin elected to go through T9-L2 Posterior Spinal Fusion surgery due to concern for worsening instability and increased kyphotic deformity with time.

39. On 05/12/2020, Mr. Martin underwent T9-L1 PSF F/instrumentation, T10-11 laminectomy, and T10-11 partial corpectomy for the diagnosis of T11-12 osteomyelitis/discitis with partial vertebral collapse, kyphosis, and stenosis without complication.

40. On 05/13/2020, Mr. Martin complained of back pain at the rate of 9/10 and prescribed with Tramadol. He was advised to hold antibiotics until culture result with sensitivities unless he was positive for signs of sepsis

41. On 05/14/2020, Mr. Martin was diagnosed with severe sepsis with acute hypoxic respiratory failure. Tylenol was put on hold due to fever and prescribed with Oxycodone and Tramadol as needed for pain. He was ordered with repeat blood culture. He was referred to Infectious Disease for further management.

42. On 05/20/2020, Mr. Martin discharged to NMCD still complaining of back pain at the rate of 6/10.

43. There were no medical records provided by NMCD for the period 04/13/20 to 05/04/20. In fact, there were no medical records provided with respect to Plaintiffs emergent back infection, other than pharmacy notes, from 12/01/2019 to 05/04/2020.

44. This represents a pattern of missing medical records in cases involving emergent infections and hospitalizations with critical gaps in missing records leading up to extended hospitalizations.

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

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

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

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

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

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

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

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

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

53. NMCD routinely ignores medical grievances.

54. NMCD routinely destroys medical grievances.
55. NMCD routinely fails to process medical grievances correctly.
56. When medical grievances are addressed, NMCD routinely and without medical justification, finds against inmates filing medical grievances.
57. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at LCCF.
58. During the term of the PSC, NMCD did not find in favor of a single NMCD inmate housed at LCCF.
59. NMCD does not consult with objective medical experts in the review of medical grievances.
60. The decision of whether to substantiate a medical grievance is made by non-medical NMCD personnel.
61. DEFENDANT STEVE MADRID is instrumental in the denial of medical grievances.
62. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including Mr. Martin.
63. NMCD's medical grievance abuses outlined above are a proximate cause of injuries related thereto.
64. 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.
65. STEVE MADRID knew of Mr. Martin's medical condition and with wanton, willful and deliberate indifference ignored Mr. Martin's medical grievances.

66. DWAYNE SANTISTEVAN knew of Mr. Martin's medical condition and with wanton, willful and deliberate indifference ignored Mr. Martin's medical grievances.

67. NMCD understands and recognizes that failure to treat OSTEOMYELITIS constitutes recklessness under New Mexico law.

68. NMCD understands and recognizes that failure to treat OSTEOMYELITIS constitutes deliberate indifference under federal law.

69. NMCD had full authority to enforce the PSC.

70. NMCD had at all times relevant to this Complaint the authority to compel its WEXFORD to treat OSTEOMYELITIS.

71. NMCD has obtained substantial budgets for treatment of OSTEOMYELITIS.

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

73. NMCD through the grievance process can control the manner in which its WEXFORD can perform their duties.

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

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

76. 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.

77. NMCD recklessly chose not to exercise any control over the manner in which its WEXFORD performed their duties leading to the OSTEOMYELITIS.



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

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

80. NMCD DEFENDANTS recklessly chose not to exercise any control over the manner in which its WEXFORD performed their duties to Plaintiff.

81. NMCD DEFENDANTS knew of the high risk of osteomyelitis and sepsis in its inmate population and inmates with Plaintiff's medical conditions.

82. NMCD DEFENDANTS knew of the large number of cases of osteomyelitis within NMCD DEFENDANTS facilities.

83. NMCD DEFENDANTS, by and through its employees, staff, and agents, knew of Mr. Martin's medical condition and risk of osteomyelitis and recklessly failed to provide or arrange for necessary and proper medical care to protect Mr. Martin's health and safety.

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

84. 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.

85. WEXFORD TechProp was over 830 pages long.

86. WEXFORD TechProp did not mention the Tort Claims Act.

87. WEXFORD TechProp did not mention the word "tort."

88. WEXFORD TechProp did not mention punitive damages.

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

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

91. The PSC was 65 pages in length.

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

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

94. The PSC did not mention punitive damages.

95. The PSC did not provide for Tort Claims Act protection for WEXFORD or their respective employees, staff and agents.

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

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

98. The PSC was entered freely by WEXFORD on or about October 18, 2019.

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

100. WEXFORD had the legal capacity to enter the PSC.

101. WEXFORD was legally competent to enter the PSC.

102. There was mutual assent on the part of WEXFORD and NMCD in the negotiation and execution of the PSC.

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

104. The PSC was not vague.

105. The PSC was not oppressive to WEXFORD.

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

107. WEXFORD is and was at all relevant times bound by the terms of the PSC.

108. The PSC is fully enforceable against WEXFORD as written and executed.

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

110. 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.

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

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

113. By the terms of Paragraph 9 of the PSC, WEXFORD employees and agents are independent contractors.

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

115. 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.

116. 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.

117. 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.

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

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

120. 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.

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

122. 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.

123. WEXFORD DEFENDANTS recklessly chose not to exercise any control over the manner in which its WEXFORD performed their duties to Plaintiff.

124. WEXFORD DEFENDANTS knew of the high risk of osteomyelitis and sepsis in its inmate population and inmates with Plaintiff's medical conditions.

125. WEXFORD DEFENDANTS knew of the large number of cases of osteomyelitis within WEXFORD DEFENDANTS facilities.

126. WEXFORD, by and through its employees, staff, and agents, knew of Mr. Martin's medical condition, risks of infection and recklessly failed to provide or arrange for necessary and proper medical care to protect Mr. Martin's health and safety.

127. WEXFORD DEFENDANTS, by and through its employees, staff, and agents, knew of Mr. Martin's medical condition and failed to provide necessary and proper medical care to protect Mr. Martin's health and safety.

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

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

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

130. ALL DEFENDANTS knew that Mr. Martin was in need of immediate treatment to address Mr. Martin's emergent infection and osteomyelitis.

131. ALL DEFENDANTS knew that the failure to treat an emergent infection constitutes recklessness under New Mexico law.

132. ALL DEFENDANTS knew that the failure to treat an emergent infection constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

133. ALL DEFENDANTS knew that the failure to treat an emergent infection constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

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

135. ALL DEFENDANTS conspired together to deny Mr. Martin 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 osteomyelitis.

**COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE  
(WEXFORD DEFENDANTS)**

136. Mr. Martin incorporates by reference as if fully set forth herein each and every allegation that is contained in the paragraphs above.

137. In undertaking the diagnosis, care and treatment of Mr. Martin, WEXFORD, 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.

138. WEXFORD, their employees, staff, and agents breached their duties and were negligent in the management of Mr. Martin 's health and well-being.

139. 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. Martin 's medical condition:

c. Failure to take the reasonable steps to acquire proper treatment of Mr. Martin:

d. Failure to refer Mr. Martin to appropriate specialists:

e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of OSTEOMYELITIS:

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

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

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

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

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

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

143. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

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

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

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

147. 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. Martin.

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

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

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. Martin.

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



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

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

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

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

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

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

158. NMCD DEFENDANTS negligently failed to oversee WEXFORD in the provision of medical care to NMCD inmates, which contributed to Mr. Martin's injuries.

159. 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. Martin's injuries.

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

161. WEXFORD's medical staff at LCCF lacked sufficient expertise to assess, treat and manage Mr. Martin's health conditions.

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

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

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

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

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

167. 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.

168. 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. Martin's injuries.

169. 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. Martin's injuries.

170. 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.

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

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

173. Due to the epidemic of MRSA, osteomyelitis, and other infections and diseases 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. Martin.

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

175. 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.

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

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

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

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

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

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

181. 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.

182. WEXFORD employees, staff and agents were unqualified to care for Mr. Martin, and yet refused to refer Mr. Martin to specialists.

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

184. WEXFORD DEFENDANTS' actions and inactions in failing to properly assess, treat and manage Mr. Martin 's OSTEOMYELITIS and related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of Mr. Martin.

185. WEXFORD'S actions and inactions in failing to properly refer Mr. Martin to be seen by a physician who could effectively treat Mr. Martin were negligent, reckless, wanton and in deliberate disregard for the health of Mr. Martin.

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

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

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

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

190. 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.

191. WEXFORD failed to properly address Mr. Martin 's medical condition.

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

193. Such conduct amounts to negligence in the treatment of Mr. Martin.

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

195. WEXFORD had a duty to allow Mr. Martin's on-site medical providers make referrals to specialists.

196. WEXFORD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering OSTEOMYELITIS.

197. 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. Martin's multiple medical conditions, including OSTEOMYELITIS and related health conditions.

198. As a result of the foregoing, Mr. Martin has suffered damages and injuries including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress, for which she is entitled to damages.

199. The actions and inactions of WEXFORD were negligent, willful, wanton, and in gross and reckless disregard for Mr. Martin's well-being, entitling Mr. Martin to punitive damages thereon.

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

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

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

202. NMCD has authority over all NMCD correctional facilities including LCCF.

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

204. NMCD is the contracting party to the PSC entered into between NMCD and WEXFORD on June 1, 2016.

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

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

207. WEXFORD's medical staff at LCCF lacked sufficient expertise to assess, treat and manage Mr. Martin's health conditions.

208. NMCD DEFENDANTS knew that WEXFORD was not properly and adequately treating Mr. Martin's medical condition.

209. NMCD DEFENDANTS knew that WEXFORD was not referring Mr. Martin to outside medical healthcare providers who could effectively and prudently treat Mr. Martin.

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

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

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

213. Such conduct amounts to negligence in the treatment of Mr. Martin.

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

215. NMCD DEFENDANTS have failed to properly maintain oversight and enforcement of the PSC.

216. 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. Referral of inmates to specialists, when necessary for inmate health.

217. 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.

218. 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. Martin.

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

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

221. NMCD did not enforce the PSC or take proper enforcement actions against WEXFORD, resulting in inadequate healthcare to its inmates, including Mr. Martin.

222. The failures of NMCD DEFENDANTS led to serious and permanent harm to Mr. Martin.

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

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

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

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

226. On information and belief, WEXFORD failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat, and manage Mr. Martin's OSTEOMYELITIS.

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

228. WEXFORD have not established any standards for medical care.

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

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



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

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

233. WEXFORD had a duty to allow Mr. Martin's medical providers to make referrals to specialist.

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

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

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

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

238. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by WEXFORD administrators to approve referrals to specialists.

239. Mr. Martin is entitled to recovery for his injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

240. Mr. Martin is entitled to punitive damages against WEXFORD.

241. 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  
(NMCD DEFENDANTS)**

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

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

244. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of OSTEOMYELITIS.

245. On information and belief, NMCD failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat, and manage Mr. Martin's OSTEOMYELITIS and related health conditions.

246. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of OSTEOMYELITIS.

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

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

249. NMCD failed to enforce the PSC.

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

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

252. NMCD's negligent hiring, training and supervision were the proximate cause of Mr. Martin's injuries and damages for which Mr. Martin is entitled to injuries and damages

including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

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

254. Mr. Martin is entitled to recovery for his 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 DEFENDANTS)**

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

256. WEXFORD DEFENDANTS intentionally denied Mr. Martin proper and necessary medical care for Mr. Martin's OSTEOMYELITIS.

257. WEXFORD failed to take action to provide proper medical care despite numerous sick calls and/or grievances thereon.

258. WEXFORD retaliated against Mr. Martin by taking away Mr. Martin's admission in the Echo Project for treatment of Mr. Martin's OSTEOMYELITIS knowing Mr. Martin's OSTEOMYELITIS was worsening Mr. Martin's health conditions, because of a disciplinary action.

259. The conduct of WEXFORD was extreme, outrageous, and intentional and in deliberate disregard for Mr. Martin's mental health.

260. Mr. Martin suffered severe emotional distress as a result of the conduct of DEFENDANTS.

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

**COUNT IX: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE  
(WEXFORD DEFENDANTS)**

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

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

264. As a result of said conspiracy, Mr. Martin suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of NMCD DEFENDANTS, WEXFORD.

265. Mr. Martin is entitled to recovery for his injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

266. PLAINTIFF is entitled to damages, including punitive damages, against WEXFORD.

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

268. Mr. Martin is entitled to punitive damages against WEXFORD DEFENDANTS.

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

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

270. WEXFORD are responsible to Mr. Martin under the doctrine of *respondeat superior* for the conduct of its employees, staff, and agents.

271. WEXFORD are responsible to Mr. Martin under the doctrine of agency for the conduct of its employees, staff, and agents.

**COUNT XI: *RESPONDEAT SUPERIOR* AND AGENCY  
(NMCD)**

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

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

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

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

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

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

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

278. It was the responsibility of WEXFORD to manage and control their medical staff and the care and treatment of Mr. Martin.

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

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

281. Mr. Martin is entitled to recovery for his injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

282. Mr. Martin is entitled to punitive damages against WEXFORD DEFENDANTS.

**COUNT XIII: PUNITIVE DAMAGES  
(WEXFORD DEFENDANTS)**

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

284. 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. Martin, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter these types of acts and omissions from occurring in the future, may well be appropriate.

**WHEREFORE**, Mr. Martin 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. Martin:

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

C. Punitive damages in an undetermined amount against WEXFORD.

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

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

Respectfully Submitted:

COLLINS & COLLINS, P.C.

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505-242-5958  
[parrish@collinsattorneys.com](mailto:parrish@collinsattorneys.com)

-and-

GUEBERT GENTILE & PIAZZA, P.C.

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*Attorneys for Plaintiff*

# Collins & Collins, P.C.

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Albuquerque, NM 87103-0506

June 2, 2020

*Via Fax to (505) 827-8533  
& by e-mail to [Brian.Fitzgerald@state.nm.us](mailto:Brian.Fitzgerald@state.nm.us)*

Mr. Brian Fitzgerald  
General Counsel  
New Mexico Corrections Department  
P. O. Box 27116  
Santa Fe, NM 87502-0116

*Via Fax to (505) 827-2969  
& USPS*

Risk Management Claims Bureau  
P.O. Box 6850  
Santa Fe, NM 87502

Re: Vincent Martin v. New Mexico Corrections Department (NMCD), Wexford Health Services, State of New Mexico, et. al.,

**Date of Incident:** On or about May 4, 2020 and on-going  
**Location:** Western New Mexico Correctional Facility (WNMCF)  
**Violations of Law:** Deliberate Indifference to the Health and Safety of Vincent Martin (NMCD# 50206)

Gentlemen\Mesdames:

This letter is intended to provide written notice to the above-captioned parties under the Tort Claims Act, NMSA 1978, §§ 41-4-1 to -4-27 regarding the actions and inactions of the Lea County Correctional Facility (LCCF) its employees, staff, contractors and other agents in their negligence and deliberate indifference to the health of Vincent Martin

## **Acts of Negligence**

On or about May 4, 2020, Mr. Martin had to be transported by emergency vehicle from the Lea County Correctional Facility (LCCF) to the Lea County Regional Medical Center. On examination, it was determined that he had developed osteomyelitis and spinal sepsis. Staff at the Lea County Regional Medical Center decided to have Mr. Martin transported to the University of



June 2, 2020  
Vincent Martin  
Page 2

New Mexico Hospital (UNMH). Mr. Martin was hospitalized at UNMH for over two weeks, during the course of which he had to have a vertebra removed from his spine as sepsis had resulted in an irrevocable level of damage. On discharge from UNMH, Mr. Martin was transferred to the Central New Mexico Correctional Facility's Long-Term Care Unit where he will undergo a long period of treatment and recovery. Mr. Martin reports that he had pleaded for medical attention at the Lea County Correctional Facility for nearly six months. He was repeatedly told that there was no reason for concern by facility medical staff. The negligence of the New Mexico Corrections Department, its staff, contractors and agents has resulted in serious and permanent injury to Mr. Martin.

**Preservation of Evidence:**

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

1. All medical records, sick call slips, medical grievances, photographs, videos, investigative files, communications, audit trails, audit log files, reports or any other documents and evidence.
2. All communications of whatsoever kind related to Mr. Vincent Martin to the #1 above and her medical care generally to include mail, emails, text, electronic messaging, voicemails, memorandum or other communications related to the medical care of Mr. Martin.

Please also preserve all of the items 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.

Sincerely,

COLLINS & COLLINS, P.C.



Parrish Collins

PC/gtg

cc: Robert Gentile  
David Ketai  
Terry Guebert

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

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

Sent: Tuesday, June 2, 2020 4:24 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 011013

Result: OK

End Time: Tue 02 Jun 2020 16:23:39

File Name: 6.2.20 - TCN with Spoliation and DIL.pdf

Category: Sending Jobs

Result Job Type Address

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OK FAX 5058272969

Thanks,

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

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

Sent: Tuesday, June 2, 2020 4:23 PM

To: Guy Gambill <guy@collinsattorneys.com>

Subject: TASKalfa 3212i Job end report mail

Job No.: 011012

Result: OK

End Time: Tue 02 Jun 2020 16:22:27

File Name: 6.2.20 - TCN with Spoliation and DIL.pdf

Category: Sending Jobs

Result Job Type Address

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OK FAX 5058278533

Thanks,