

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT COURT

CARLOS ZUNIGA,

Plaintiff,

v.

NoD-202-CV-2024-01375

NEW MEXICO CORRECTIONS DEPARTMENT;  
WEXFORD HEALTH SOURCES, INC.; ALISHA  
TAFOYA, Secretary of Corrections; WENCE  
ASONGANYI, Health Services Administrator; HOPE  
SALAZAR; PHC LAS CRUCES, INC., d/b/a Memorial  
Medical Center; the BOARD OF REGENTS OF THE  
UNIVERSITY OF NEW MEXICO; and DOE  
EMPLOYEES, STAFF AND AGENTS of NMCD,  
Wexford, Memorial Medical Center, and the University  
of New Mexico Hospital,

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO CONSTITUTION AND  
NEW MEXICO TORT, CONTRACT, AND COMMON LAW**

Plaintiff, Carlos Zuniga (“Plaintiff” or “Mr. Zuniga”), by and through his attorneys Collins  
& Collins, P.C. (Parrish Collins & Francheska Bardacke) and DeLara | Supik | Odegard P.C. (Alisa  
Wigley-DeLara) submits this Complaint for Violations of New Mexico Tort, Contract, and  
Common Law, and the New Mexico Constitution.

**PARTIES, JURISDICTION AND VENUE**

1. In 2021, Mr. Zuniga was sentenced to serve one year in custody with the Defendant  
New Mexico Corrections Department (“NMCD”) at the Southern New Mexico Correctional  
Facility (“SNMCF”) for a parole violation. He was released from the custody of NMCD on July  
28, 2022. Mr. Zuniga currently resides in Bernalillo County, State of New Mexico.

2. Defendant NMCD is an entity of the State of New Mexico that retains ultimate authority and responsibility over the conditions of confinement and access to medical care of all NMCD inmates, including Mr. Zuniga.

3. Defendant Wexford Health Sources, Inc. (“Wexford”) is a foreign corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico. Pursuant to a Professional Services Contract # 20-770-1200-0043 (the “PSC”), Wexford was contracted by NMCD to provide medical care to inmates in the NMCD prison system, including Mr. Zuniga. The term of the PSC began on or about October 18, 2019, and was in effect at all times relevant to this Complaint.

4. Defendant Alisha Tafoya was at all times relevant to this Complaint the Secretary of Corrections for NMCD. NMCD’s Secretary of Corrections is the “chief executive and administrative officer” of NMCD. NMSA 1978, § 9-3-4. Although “organizational units of [NMCD] and the officers of those units . . . have all of the powers and duties enumerated in the specific laws involved . . . the carrying out of those powers and duties [is] subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility” as chief executive to that department. NMSA 1978, § 9-3-12. Defendant Tafoya had oversight authority and served as the final decision-making authority concerning medical care provided to NMCD inmates.

5. Defendant Wence Asonganyi was at all times relevant to this Complaint NMCD Health Services Administrator with oversight authority over medical care provided to NMCD inmates.

6. Defendant Hope Salazar was at all times relevant to this Complaint the Director of NMCD Office of Inspector General with responsibility to assure services contractually required

by the State of New Mexico are met qualitatively and quantitatively. The Office of the Inspector General oversees Internal Audits and Standards Compliance (IASC) which oversees private prison contract compliance, American Correctional Association compliance, quality assurance and conditions of confinement for the incarcerated. The bureau is also responsible for NMCD policy revisions and other compliance efforts related to the prevention of major prison litigation.

7. At all times alleged herein, Doe Medical Providers were agents and/or employees of Wexford and/or NMCD, acting within the scope of their employment and/or agency as such. They were all medical providers for Mr. Zuniga while he was in NMCD custody and, as such, they were all acting within the scope of their employment as the apparent and actual agents, servants, and/or employees of Wexford and NMCD. They were each responsible for the care, health, safety, and proper medical treatment of Mr. Zuniga.

8. Upon information and belief, Defendant Alisha Tafoya as the Secretary of Corrections for NMCD, Defendant Wence Asonganyi as the Health Services Administrator of NMCD, and Defendant Hope Salazar as the Director of NMCD Office of Inspector General has the authority and responsibility to oversee the medical care provided in NMCD facilities, including SNMCF, and such oversight responsibilities included the proper implementation of and adherence to NMCD policies by its employees and contractors. They are sued in their individual capacities.

9. Doe Corrections Officers (“COs”) were the unit officers, pod officers and control officers assigned to Mr. Zuniga’s cell or pod unit at all times relevant to this Complaint. These Doe Corrections Officers were each responsible for the care, health, safety, and proper medical treatment of Plaintiff while he was housed at the SNMCF. They were each employees or agents of NMCD and acting within the scope of their employment at all times relevant to this lawsuit. In violation of their duties, they failed to intervene to obtain necessary and proper medical care for

Plaintiff. They are sued herein in their individual capacities.

10. Defendants NMCD and Wexford are liable for damages caused by their respective employees and agents while working within the scope of their employment under the doctrines of *respondeat superior* and agency.

11. Defendant PHC Las Cruces, Inc., d/b/a Memorial Medical Center (“Memorial Medical Center”) is a domestic, for-profit corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico.

12. Defendant Memorial Medical Center is liable for any negligence by its employees, agents or apparent agents who were acting within the scope of their duties related to their care of Plaintiff.

13. Defendant Board of Regents (“Board of Regents”) of the University of New Mexico acted for its public operation as the Health Sciences Center, University of New Mexico School of Medicine, UNM Medical Group, and the University of New Mexico Hospital. Pursuant to Section 13 of Article XII of the New Mexico Constitution, the New Mexico State Legislature provided for the control and management of the University of New Mexico to the Board of Regents.

14. Defendant Board of Regents are liable for any negligence by its employees, agents or apparent agents who were acting within the scope of their duties related to their care of Plaintiff in its public operation as the Health Sciences Center, University of New Mexico School of Medicine, UNM Medical Group, and the University of New Mexico Hospital.

15. Mr. Zuniga gave timely notice of his claims on September 6, 2022, pursuant to NMSA § 41-4-16 of the New Mexico Tort Claims Act and NMSA 1978, § 41-4A-1, et seq. of the New Mexico Civil Rights Act, **EXHIBIT 1**.

16. Defendants had actual notice of Mr. Zuniga's claims.

17. Mr. Zuniga was not imprisoned at the time of filing this Complaint, so 42 U.S.C.A. § 1997e and NMSA § 33-2-11 are inapplicable.

18. Jurisdiction and venue are proper over Defendants pursuant to NMSA §§ 38-3-1 and 41-4-18; Article II, §§ 13 and 18 of the New Mexico Constitution; the New Mexico Civil Rights Act (NMSA §§ 41-4A-1 through 41-4A-13); and New Mexico tort, contract, and common law.

### **FACTUAL BACKGROUND**

#### **I. MR. ZUNIGA EXHIBITED AND COMPLAINED OF SEVERE PAIN FOR WEEKS BEFORE FINALLY BEING SENT TO THE EMERGENCY ROOM AT MEMORIAL MEDICAL CENTER**

19. Plaintiff had a known history of intravenous drug use and tattoos.

20. In the beginning of May 2022, Mr. Zuniga started feeling pain in his back. The first day he felt pain, he tried to shrug it off thinking the pain was not serious.

21. By the second day of the onset of his pain, he felt a huge knot on his spine and fellow prisoners became alarmed by his pain. An inmate in the same unit as Mr. Zuniga tried to help him by rubbing his back.

22. On the third day, Mr. Zuniga woke up in the middle of the night feeling like his spine was being ripped out of him. He lay on the floor for hours crying and begging for help and for someone to pick him up.

23. Mr. Zuniga continued to suffer severe pain into June and was still begging to go to medical to receive treatment for the excruciating pain in his back. He told staff members something was wrong with his spine, and he relied on fellow prisoners to help him move around and complete daily tasks.

24. On or about June 22, 2022, Mr. Zuniga was suffering and in agony when another fellow prisoner picked him up and started screaming for medical help for his friend. Several inmates assisted Mr. Zuniga in getting attention from medical personnel who finally placed him in a wheelchair and took him to medical at SNMCF.

25. At medical, the nurses told Mr. Zuniga there was nothing they could do because “the doctors do not come in and we can’t do anything about this,” and left Mr. Zuniga in the wheelchair for hours in the waiting area before taking him for an examination.

26. When he was finally examined by a provider, Mr. Zuniga was noted to have lower back tenderness and muscle tightness in a stooped posture. He was diagnosed with acute middle back pain/spams. He was prescribed pain medication, given a shot in his buttocks for the pain, and sent back to his unit. While x-rays were ordered at this visit, the x-rays were never completed. After about two hours, the pain was back.

27. The next day, on or about June 23, 2022, Mr. Zuniga submitted a Health Services Request Form requesting medical help. In the Health Services Request Form, he noted that he was still having back pain rated at “a 9 out of 10.” He also reported back spasms, difficulty walking, and an inability to lay down without making the pain worse.

28. On June 24, 2022, Mr. Zuniga was seen again for back pain. Upon examination, he was noted with tenderness on the left upper side back area. He was diagnosed with back pain and referred to physical therapy for further evaluation.

29. Approximately one week later, Mr. Zuniga was in so much pain he struggled to take a shower and clean himself. SNMCF Correctional Officers confronted and threatened Mr. Zuniga in the shower, threatening to beat him up for taking too long. Mr. Zuniga pleaded with them and told them he could not move any faster due to his pain.

30. Around this time, Mr. Zuniga submitted a grievance regarding his pain and lack of any meaningful medical treatment.

31. On June 27, 2022, Mr. Zuniga was seen for persistent acute pain/spasm in the mid and lower back region. Upon examination, he was noted to have thoracic lumbar back tenderness. He was assessed with acute exacerbation of thoracic lumbar pain. He was ordered with lumbar spine X-rays -- a second order for x-rays. He was prescribed Decadron 8 mg (for arthritis) and Cyclobenzaprine 5 mg (a muscle relaxant).

32. At this time and on two separate occasions, Wexford providers had ordered x-rays for Mr. Zuniga, but those x-rays were postponed, repeatedly, with no reason provided for doing so and were ultimately never provided. In fact, Mr. Zuniga never received any x-rays, MRI scans, or any other radiology scans to determine the cause of his debilitating and ongoing back pain.

33. At this point, Mr. Zuniga refused to go back to his unit because he was in too much pain to walk there on his own. He stayed in medical, wanting at a minimum, the ordered x-rays. A Lieutenant told him, "if you go back to your unit I promise I will get you medical help." Mr. Zuniga returned to his unit but did not receive the promised medical help.

34. Mr. Zuniga exhibited red flag symptoms suggestive of a vertebral infection. However, the NMCD and Wexford Defendants failed to take appropriate and reasonable action and send Mr. Zuniga out for a higher level of care – care that could not be provided at the SNMCF.

35. Finally, three days later, on or about June 30, 2022, Mr. Zuniga was sent to the emergency room at Memorial Medical Center.

## **II. DEFICIENT CARE AT MEMORIAL MEDICAL CENTER**

36. At Memorial Medical Center, Mr. Zuniga continued with complaints of lower back pain, moderate back pain in the left and right subscapular area, pain in the thoracic area, and pain

in the left and right mid-back area. Despite his ongoing pain complaints and the subjective findings, suggestive of a spinal infection, an MRI was not recommended. Instead, Mr. Zuniga underwent a CT scan of his lumbar spine and a CT scan of his thoracic spine.

37. In a patient with a suspected spinal infection, an MRI without and with IV contrast should have been ordered because of its high sensitivity and specificity. An MRI allows the diagnosis of infection before bone destruction is evident on either CT or radiography.

38. Not surprisingly, Mr. Zuniga's spinal infection remained undiagnosed. Instead, he was diagnosed with acute back pain and musculoskeletal pain and discharged back to NMCD custody.

39. The discharge instructions recommended that Mr. Zuniga follow-up in 2-3 days due to a fever of 102 degrees Fahrenheit, to recheck his back pain, and for further diagnostic work-up if necessary.

### **III. DEFICIENT CARE UPON HIS RETURN TO SNMCF.**

40. Back at SNMCF, staff and medical personnel did not administer his medications as ordered. He did not have a follow up appointment with a physician as recommended in the discharge instructions from Memorial Medical Center.

41. On July 18, 2022, over 2 weeks after his discharge from Memorial Medical Center, Mr. Zuniga was seen in medical for a follow-up for lower back pain and was diagnosed with acute to chronic thoracic nerve neuritis. He was prescribed Depomedrol 40 mg – an anti-inflammatory used to treat pain that occurs with arthritis. No recommendation was made to obtain an MRI.

42. 10 days later, on July 28, 2022, Mr. Zuniga was released from the custody of NMCD.

43. In spite of the presence of red flag symptoms suggestive of vertebral infection such

as acute severe persistent back pain with a significant history of intravenous drug abuse, fever, and vertebral tenderness, NMCD and Wexford personnel disregarded Mr. Zuniga's escalating, debilitating, and ongoing pain while he was in custody. He continued to suffer debilitating pain and loss of physical ability up until his discharge on July 28, 2022.

#### **IV. DEFICIENT CARE AT UNMH.**

44. On July 28, 2022, the same day Mr. Zuniga was released from custody, he went to the University of New Mexico Hospital ("UNMH") for treatment for his continued, debilitating back pain. He had an x-ray of his thoracic spine, which revealed focal disc space height loss at T7/T8 concerning discitis/osteomyelitis and/or related sequelae. An MRI of his thoracic spine with and without contrast was recommended, but not on an emergent basis.

45. Instead, Mr. Zuniga returned to UNMH on August 11, 2022, with worsening back pain since his prior emergency department visit. The MRI of his thoracic spine with and without contrast revealed discitis/osteomyelitis centered at the T8-9 level associated with ventral and dorsal epidural phlegmon which resulted in severe thecal sac narrowing.

46. Mr. Zuniga was assessed to have chronic osteomyelitis/discitis at T8-9, ventral and dorsal epidural phlegmon with no neurological deficits. However, Mr. Zuniga exhibited signs of progressive neurological symptoms and sepsis, which should have warranted empirical antibiotic therapy.

47. Initially, Mr. Zuniga was started on Ceftriaxone and Vancomycin. However, the antibiotic therapy was later discontinued with a plan to biopsy.

48. On August 12, 2022, Mr. Zuniga underwent a CT and ultrasound-guided biopsy of the right paravertebral soft tissue along T8/T9 vertebral bodies. While waiting for the biopsy results, a decision was made to discharge Plaintiff with a Jewett back brace and a plan to conduct

a bone biopsy in the future.

49. On August 25, 2022, Mr. Zuniga returned to the emergency department at UNMH with bilateral lower extremity numbness and weakness and an inability to walk. After additional radiology images were performed (x-rays, CT scan, and MRI), Mr. Zuniga was assessed to have spinal cord compression secondary to T7/T8 osteomyelitis phlegmon with incomplete spinal cord injury. Immediate surgery was recommended.

50. On August 26, 2022, Mr. Zuniga underwent a T6-T11 posterior spinal fusion instrumentation, and laminectomies costovertebrectomy with cage reconstruction.

51. Following his surgery, Mr. Zuniga was on antibiotic therapy, pain management medications, and physical therapy. He was discharged from UNMH on September 17, 2022, with a full body brace (that he was required to wear for over 6 months) and a need for future rehabilitation needs to regain mobility and strength, to walk without the assistance of a walker, and to adjust to post-surgical numbness.

52. Mr. Zuniga continues to have pain, physical limitations, and disability due to acts and failures to act of the Defendants.

**V. IN OPERATING SNMCF, DEFENDANTS' VIOLATED NUMEROUS APPLICABLE CONTRACTUAL PROVISIONS AND NMCD POLICIES, CONSTITUTING FURTHER PROOF THAT THEY BREACHED THE DUTY OF CARE OWED TO MR. ZUNIGA.**

**A. SNMCF prisoners, including Mr. Zuniga, are intended beneficiaries of the PSC.**

53. The terms of the PSC were clearly meant to benefit the prisoners in NMCD's custody, making Mr. Zuniga an intended third-party beneficiary of the PSC contract. Notably, the scope of the services identified in the PSC includes expansive explanations of requirements for Wexford's "medical services program," "inpatient infirmary: medical care services," "tertiary health care services," "nutrition and therapeutic diets," "emergency preparedness/medical disaster

plan,” and “safety, sanitation, and infection control,” among many others. Each of these sections almost exclusively concerns NMCD prisoners and is meant to benefit them.

54. Additionally, provision 4 of the PSC required Wexford to “abide by any and all rules and regulations set forth by the Agency [NMCD] so as not to . . . jeopardize the health and safety of any employees, inmates, or the general public”—a clear and unequivocal statement indicating that NMCD prisoners are intended to benefit through the protections and terms provided in the PSC.

55. Similarly, the “Staffing” section of Attachment I to the PSC required Wexford to “provide professionally qualified licensed or certified personnel at levels that assure all offenders equal access to and the continuity of care, which is maintained in accordance with all ACA standards while providing services commensurate with the offenders’ needs in an efficient, effective and timely manner.” The PSC expressly took NMCD prisoners’ needs into consideration and required Wexford to be held accountable for those needs. Moreover, the PSC specified that one of its central goals was “the goal of delivering a comprehensive health care services program”—a program that was for the benefit of NMCD prisoners.

56. The terms of the PSC itself even contemplate a situation in which a third-party beneficiary could seek to enforce the contract terms. Provision 23 of the PSC reads in part: “The Contractor [Wexford] shall defend, indemnify and hold harmless the Agency [NMCD] 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.” Reasonably interpreted, this broad language was meant to include intended-beneficiary contract claims.

- B. NMCD was responsible for overseeing and enforcing both the terms of the PSC and Wexford’s compliance with NMCD policies and procedures.

57. NMCD had authority, control, and responsibility over the execution, implementation, and enforcement of the PSC.

58. For example, provision 2(C) of the PSC states: “If the Agency [NMCD] finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor [Wexford] that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the service, and outlining steps the Contractor may take to provide remedial action.”

59. Additionally, in PSC Attachment I, Section “Service Delivery Standards,” NMCD reserved “the right to review and approve personally or by designee, the policies and procedures of the contractor [Wexford] in any areas affecting the performance of its responsibilities under law.” This provision also required Wexford personnel to report “any problems and/or unusual incidents to the NMCD or designee,” including “security-related and personnel issues that might adversely affect the delivery of health care services.”

60. Likewise, the PSC allows NMCD to “independently perform performance measure reviews at sites as deemed necessary . . . to assess quality of care and operational standards.”

61. NMCD also had access to Wexford’s “fiscal records and other books, documents, papers, plans, and writings . . . that [were] pertinent to [the PSC]” under PSC Attachment I, Section “Access for Review by [NMCD],” and NMCD was allowed “to perform examinations and audits and make excerpts and transcripts” of these documents related to its oversight of Wexford’s performance under the PSC. Wexford was similarly required to give NMCD access to prisoners’ medical records and other medical information through Wexford’s “medical management system that serve[d] each of the [prison] facilities.”

62. In provision 4 of the PSC, NMCD reserved the right “to deny any employee, or agent of the Contractor [Wexford] access to the Agency [NMCD] property should that individual fail the criteria required for the security clearance or be found to be in violation of NMCD policies and procedures.” The same provision also allowed NMCD to escort any Wexford personnel off the property “for any inappropriate conduct or actions that jeopardize the safety, security, or wellbeing of the facility.” If such conduct did occur, NMCD could immediately terminate the PSC under the terms of the agreement.

63. Attachment I of the PSC, Section “Hiring and Retention,” specified that the “NMCD HSA [Health Services Administrator] and warden of the institution shall be provided with an opportunity to review the credentials and meet with the contractor’s lead staff and all medical providers for an institution,” and most candidates for medical positions were “subject to approval by NMCD at the beginning and throughout the course of the agreement.”

64. All of these provisions ensured that NMCD maintained an active role in monitoring Wexford’s fulfillment of the PSC and that it retained substantial authority to modify Wexford’s servicing of the contract or to terminate it.

65. Moreover, NMCD had a statutory duty to exercise “general superintendence and control over the government and discipline of the penitentiary” of SNMCF. NMSA § 33-2-10.

C. In providing medical services to Mr. Zuniga, Wexford violated numerous provisions of the PSC, NMCD failed to properly enforce these provisions regarding Mr. Zuniga, and he suffered because of it.

66. Provision 19 of the PSC states: “In accordance with all such laws of the State of New Mexico, the Contractor [Wexford] assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity . . . be denied

the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement.”

67. Wexford, through its agents, violated this provision of the PSC when it discriminated against Mr. Zuniga based on his serious medical condition and physical handicap by denying him appropriate help and support, harassing him in the shower for taking too long, delaying imaging and pain medication, and forcing him to move in agony around the prison.

68. Wexford also violated the PSC contract provision specifying that “[a]ny unresolved diagnostic or therapeutic problems shall be referred to a qualified health care provider,” and “[a]ny inmate with a complaint who has submitted two or more sick call requests for the same unresolved problem shall be referred to a qualified health care provider.”

69. Mr. Zuniga repeatedly made sick call requests verbally and exhibited clear signs of a severe, unresolved medical issue for weeks, yet he was not referred to a qualified health care provider until he suffered in agony for weeks.

70. Similarly, Wexford violated the PSC contract provision requiring it to “make referral arrangements with specialists off-site for the treatment of those inmates with health care problems which may extend beyond the primary care services provided on-site.” More importantly, Wexford was required to “establish a utilization management program for off-site referrals including subspecialty and inpatient stays,” and this program was required to “demonstrate that access to services [was] appropriate and timely.”

71. Moreover, under the contract, NMCD was required to “[p]rovide for review and adjudication of utilization management decisions made by the contractor [Wexford].”

72. Mr. Zuniga’s nearly deadly experience with the infection of his spine at the hands of Wexford medical personnel provides evidence that Wexford’s utilization management program

conflicts with its obligation to provide appropriate and timely access to medical services, as Mr. Zuniga's access to medical services was the opposite of appropriate and timely. Additionally, Mr. Zuniga's dire medical situation persisted for weeks and months, and the one arrangement for off-site treatment to Memorial Medical Center, after weeks, was not followed up with any meaningful care.

73. Accordingly, Wexford also violated the PSC provision mandating: "Emergency services shall be provided to all inmates with acute illness or conditions that cannot wait until the scheduled sick call."

74. And NMCD failed its duty to provide oversight of the utilization management processes and decisions of Wexford.

75. Upon information and belief, Wexford violated the "Minimum Required Staffing Plan" outlined in Attachment I of the PSC, which required Wexford to "maintain the minimum required staffing as outlined in Appendix G to the RFP," including "the number of full-time equivalents (FTEs) and hours by type of position, the required credentials, and the distribution of staff among facilities."

76. Wexford violated the "Service Delivery Standards" outlined in Attachment I of the PSC, specifying that the "contractor's [Wexford's] services shall meet the standards established by the American Correctional Association (ACA), current community standards of care, specified psychiatric standards, and NMCD policies and procedures."

77. In Mr. Zuniga's case, Wexford delayed and denied meaningful medical treatment for a readily treatable infection, which was permitted to progress to a life-threatening spine infection that nearly rendered him paralyzed and that could have killed him. Wexford ignored blatant signs of Mr. Zuniga's dire medical state, including his repeated cries of agony, his

deteriorating psychological condition and loss of mobility, and the inability to walk, or ambulate on his own. Such treatment violates ACA standards and NMCD policies and procedures and grossly violates applicable community standards of care.

78. Upon information and belief, Wexford also violated the “Minimum Required Staffing Plan” outlined in Attachment I of the PSC, which required Wexford to “maintain the minimum required staffing as outlined in Appendix G to the RFP,” including “the number of full-time equivalents (FTEs) and hours by type of position, the required credentials, and the distribution of staff among facilities.”

79. Despite Wexford’s blatant violations of numerous PSC provisions—and despite the disastrous toll these violations took on NMCD prisoners like Mr. Zuniga—NMCD never utilized any of its available enforcement and oversight responsibilities delegated to it in the PSC. Instead, NMCD permitted Wexford to violate countless PSC provisions intended to benefit Mr. Zuniga, and this neglect harmed him and nearly caused his paralysis and death.

D. Wexford and NMCD personnel also violated numerous NMCD rules, policies, and procedures, which NMCD failed to properly monitor or enforce, and which caused Mr. Zuniga’s injuries.

80. By contracting with NMCD, Wexford agreed to provide a level of care consistent with NMCD’s own rules, policies, and procedures. Similarly, per the “applicability” specifications in the NMCD policies themselves, NMCD and contracted personnel were required to follow NMCD’s rules, policies, and procedures while acting within the scope of their employment and/or contract. However, Wexford and NMCD personnel violated many of NMCD’s rules, policies and procedures, and these violations caused Mr. Zuniga’s injuries.

81. In addressing Mr. Zuniga’s medical concerns, Wexford and NMCD personnel violated the following NMCD policies, among others, as described in detail above:

- (a) CD-032200(G): “Inmates shall be protected from personal abuse, corporal or unusual punishment, humiliation, mental abuse, personal injury, disease, property damage, harassment or punitive interference with the daily functions of living, such as eating and sleeping.”
- (b) CD-170100(E-F): “Inmates who need health care beyond the resources available in the facility, as determined by the responsible health care practitioner, are transferred under appropriate security provisions to a facility where such care is available. . . . A transportation system that assures timely access to services that are only available outside the correctional facility is required.”
- (c) CD-170100(G): “A written individual treatment plan is required for inmates requiring close medical supervision, including chronic and convalescent care.”
- (d) CD-170100(DD): “The contract with the healthcare vendor shall ensure that levels of care and operations meet the standards of ACA [American Corrections Association] and NCCHC [National Commission on Correctional Health Care] as well as the policies and directives of the NMCD and its Medical Authority.”
- (e) CD-170100(FF): “All state and private facilities that house state inmates shall follow procedures and practices that are in compliance with Corrections Department policy, ACA, and NCCHC standards.”<sup>1</sup>
- (f) CD-170100(GG): “Inmates with disabilities shall be housed in a manner that provides for their safety and security.”
- (g) CD-170101(A)(2-4): “When necessary services are not available on-site, provisions shall be made for transfer of the inmate to another facility within the NMCD or to a community provider where such services are available. . . . It shall be the responsibility of custody staff to provide for adequate and timely transportation of inmates for off-site medical services.”
- (h) CD-170101(J)(4): “Urgent or emergency transports will be conducted immediately upon the determination by the medical staff that it is necessary.”
- (i) CD-170101(R)(3-4): “Procedures which cannot be accomplished at the facility shall be scheduled at an off-site facility. Scheduled medical procedures will not be delayed because of fiscal constraints when the following conditions exist: a. When pain is a manifestation of the medical condition and the treatment of choice for the potential alleviation of the pain is a scheduled procedure. b. When

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<sup>1</sup> Alarming, NMCD’s Deputy General Counsel recently admitted that “NMCD facilities are not NCCHC accredited” although its own policies, including those above, specifically require NCCHC compliance. (Ex. 13.) The NCCHC establishes mandatory minimum standards for correctional healthcare, and failure to maintain accreditation suggests failure to establish and maintain minimum standards in correctional healthcare. It also evinces NMCD’s awareness that it is currently violating its own publicly available policies.

the deterioration of a person's health status associated with the progression in a chronic disease can be halted or significantly slowed by the scheduled procedure or c. When a disabling malady poses a life threatening or permanently disabling situation or a significant constraint to the person's rehabilitation and the scheduled procedures is the treatment of choice."

- (j) CD-176100(A)(1): "The NMCD Health Services Bureau and the Behavioral Health Services Bureau shall ensure that all inmates are treated with dignity and respect and in a manner that recognizes their basic human rights."

82. Because Defendants violated the above policies, Mr. Zuniga received constitutionally inadequate medical services, his physical condition deteriorated severely, and he nearly suffered paralysis and died from what was originally an easily detectable, manageable, and treatable infection. The actions of Defendants caused Mr. Zuniga severe and permanent harm.

83. The explicit terms of the PSC required Wexford to comply with NMCD's rules, policies, and procedures, which were frequently referenced in the PSC.<sup>2</sup> Accordingly, both Wexford and NMCD knew of these policies and knew that they were not being followed by Wexford and NMCD personnel.

**VI. MR. ZUNIGA FACES LIFELONG PHYSICAL AND EMOTIONAL DAMAGES AND PAIN DUE TO DEFENDANTS' NEGLIGENT AND UNLAWFUL CONDUCT.**

84. As a result of Defendants' negligent and unlawful conduct, Mr. Zuniga endured tremendous pain and suffering, severe psychological and emotional distress, mental anguish, and

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<sup>2</sup> See, e.g., PSC, §5 ("the Contractor [Wexford] must furnish all information and reports required by, or pursuant to, the rules, regulations, and policies of the NMCD"); PSC, Attachment I, pg. 12 ("For a copy of non-confidential NMCD policy and procedures please refer to the website [corrections.state.nm.us/policies](https://corrections.state.nm.us/policies)"); PSC, Attachment I, pg. 12 ("The contractor's [Wexford's] services shall meet the standards established by the American Correctional Association (ACA), current community standards of care, specified psychiatric standards, and NMCD policies and procedures."); PSC, Attachment I, pg. 18 ("The orientation shall include a review of the policies and procedures, nursing protocols and manuals for NMCD."); PSC, Attachment I, pg. 22 ("Inmate medical records will be maintained and retained in accordance with New Mexico statute, rules and regulations as well as NMCD and New Mexico State Records and Archives policy and procedure."); PSC, Attachment I, pg. 24 ("The contractor [Wexford] shall provide on-site preventive and primary, secondary and tertiary health care services in accordance with NMCD policies and procedures...").

lost wages, loss of earning capacity, and loss of enjoyment of life. Accordingly, he is entitled to general and special compensatory damages for these losses.

85. Punitive damages or exemplary damages are also appropriate against the Defendants Memorial Medical Center and Wexford punish and deter these types of acts and omissions from occurring in the future, as the actions of the employees and/or agents of these Defendants were undertaken with malice or, minimally, with reckless indifference to Mr. Zuniga's rights, and these actions were adopted and ratified by Memorial Medical Center and Wexford.

86. From the time he started feeling excruciating pain in his back at SNMCF, Mr. Zuniga worried that something was seriously wrong with him and experienced angst and fear. From May of 2022 until his release from custody on July 28, 2022, Mr. Zuniga was in a state of constant terror that he still, to this day, has difficulty verbalizing. Once he was able to seek care on his own, he was still denied prompt and appropriate care until his condition deteriorated to the point of requiring surgery. After his surgery, he was released and could not work or move on his own. He was in a full-body brace for over six months.

87. Mr. Zuniga has lost all practicable ability to work. He still walks with a cane. For years he was in construction and ran a paint company. Now, he is exhausted after trying to walk for even 10 to 15 minutes. The year after his surgery, he could not walk at all for months.

88. Mr. Zuniga has also been stripped of most of his typical leisure activities. For example, before his surgery, he used to go to the park with his two sons. He was active and enjoyed working out at the gym, running, and jumping. He used to ride a bike a lot and can no longer ride. He can no longer do any of these activities. He cannot even do his own laundry or make meals and relies on a home health care worker on a daily basis.

89. Moreover, Mr. Zuniga is in a constant state of pain currently rated 9/10 in severity, and it was 10/10 in severity for many months after his surgery. He takes antibiotics twice daily and has to go into the hospital for any illness, even a cold, because he has so much hardware in his back that he requires an emergency room work up and diagnostic imaging for everything.

90. All of Mr. Zuniga's injuries were foreseeable consequences of Defendants' unlawful conduct. It was foreseeable that providing deliberately indifferent and negligent prison supervision, management, and medical care would result in the abovementioned substantial injuries to prisoners who are victims of such indifference and negligence. It was foreseeable that denying Mr. Zuniga appropriate and timely MRI imaging would result in the abovementioned substantial injuries to Mr. Zuniga. It was foreseeable that denying Mr. Zuniga prompt and ongoing antibiotic therapy would result in the abovementioned substantial injuries to Mr. Zuniga. Similarly, it is foreseeable that Defendants' outrageous conduct that intentionally or recklessly disregarded Mr. Zuniga's life would cause him the extreme emotional distress explained above.

**VII. WEXFORD'S WIDESPREAD PATTERNS AND PRACTICES OF PROVIDING UNCONSTITUTIONAL MEDICAL CARE WERE THE MOVING FORCES BEHIND MR. ZUNIGA'S INJURIES.**

91. Wexford maintained various widespread patterns and practices which violated Mr. Zuniga's state constitutional rights and contributed to his severe injuries, including: (1) failing to report, diagnose, and properly examine and treat prisoners with serious medical and/or mental health conditions; (2) delaying or denying patient referrals to necessary emergency or other offsite medical services; (3) severely understaffing its medical and mental health facilities; (4) failing to provide adequate medical documentation or communicate changes in patient conditions to the appropriate correctional officers and/or medical or mental health staff; and (5) failing adequately

to hire, retain, and train and supervise its employees and agents on procedures necessary to protect patients' health.

92. In essence, Wexford's medical care of NMCD prisoners effectively amounted to no medical care at all.

A. Wexford had a pattern and practice of failing to report, diagnose, and treat warning signs of serious medical and mental health conditions, and of delaying or denying patients access to critical off-site medical services, which were contributing factors to Mr. Zuniga's injuries.

93. On October 5, 2023, a corporate representative for Wexford testified in deposition that Wexford pays \$0.00 for any prisoner who is hospitalized for 24 hours or more in New Mexico, or anywhere in the Country.

94. Wexford's widespread failure to refer prisoners for off-site medical care was, in large part, financially motivated, as Wexford was contractually relieved from paying for the hospital costs of any prisoner who was hospitalized for more than 24 hours. Evidently, this fee structure incentivized Wexford to refrain from referring prisoners for off-site care unless and until their injuries were so severe that they would likely require hospitalization lasting more than 24 hours.

95. Upon information and belief, on-site Wexford medical providers are unable to refer prisoner patients for off-site diagnostic testing and services. Instead, Wexford's "utilization review" process requires Wexford corporate approval of prisoners' off-site services. Upon information and belief, Wexford has a pattern and practice of routinely denying off-site medical referrals for prisoners and, in doing, so, frequently overrides the clinical advice of its on-site medical providers.

96. Wexford's practices, amounting to standard operating procedures, are clearly illustrated in court cases spanning decades throughout the United States. In addition, the practices have been extensively covered by the media, including New Mexico media.

97. Wexford and NMCD were on notice of these widespread unconstitutional practices prior to Mr. Zuniga's injuries and thereby knew that additional safeguards should have been put in place to address the medical needs of inmates, such as Mr. Zuniga.

98. Accordingly, it can be inferred that Wexford intentionally failed to report, diagnose, and treat these serious warning signs despite the known and obvious risk to patient safety. And NMCD intentionally failed to provide proper supervision and oversight of these practices despite the risk known to it.

99. Wexford's widespread practice of failing to report, diagnose, and treat the warning signs of serious medical and mental health conditions shares a close factual relationship with the events in Mr. Zuniga's case, and accordingly, the widespread practice was the moving force behind his injuries and near-death experiences.

100. Significantly, Wexford personnel failed to conduct diagnostic and physical examinations multiple times in Mr. Zuniga's case alone, which establishes a pattern and practice of insufficient reporting, diagnoses, and treatment of serious medical conditions. Wexford personnel failed to refer Mr. Zuniga for a higher level of care that could not be provided at the SNMCF.

101. As such, Wexford's policy and practice of failing to report, diagnose, and treat warning signs of serious medical and mental health conditions caused Mr. Zuniga's injuries.

B. Wexford had a pattern and practice of severely understaffing its medical and mental health facilities, which was a moving force behind Mr. Zuniga's injuries.

102. Wexford's chronic understaffing of medical positions has been continually publicized and made known to both Wexford and NMCD as early as the late 1990s up to the present date.

103. Upon information and belief, Mr. Zuniga was unable to receive adequate medical treatment due, in part, to the severe shortage of healthcare providers at the prison. Numerous important health protocols were violated, and critical assessments and evaluations foregone. It was this lack of medical care and contract oversight that exacerbated Mr. Zuniga's medical issues and eventually caused his injuries.

104. Simply put, Mr. Zuniga received little to no healthcare services largely because there were very few healthcare providers working in NMCD prisons in the months leading up to his injuries.

105. Wexford and NMCD were on notice that this severe understaffing was substantially certain to cause constitutional violations regarding patients' medical treatment, yet they both chose to disregard that risk and, for decades, continued to display a pattern and practice of severe shortages in medical staff and mental healthcare providers.

106. In this way, Wexford and NMCD acted with deliberate indifference and/or gross negligence to prisoners' healthcare needs.

C. Wexford also had a pattern and practice of failing to provide adequate medical documentation and failing to communicate changes in patient conditions, both of which contributed to Mr. Zuniga's injuries.

107. Wexford failed to provide adequate medical documentation and failed to communicate changes in patient conditions for many other patients in circumstances similar to those of Mr. Zuniga.

108. In Mr. Zuniga's case, Wexford failed to provide adequate medical documentation and failed to communicate important changes in Mr. Zuniga's medical condition to providers who had the ability to appropriately treat his condition.

109. Wexford and NMCD were on notice of these widespread unconstitutional practices prior to Mr. Zuniga's injuries and thereby knew that additional safeguards should have been put in place to address the inadequate medical documentation and communication of changes in patient conditions.

110. Accordingly, it can be inferred that Wexford intentionally failed to adequately document patient conditions and failed to adequately communicate changes in those conditions despite the known and obvious risk to patient safety.

111. Wexford's widespread practice of failing to provide adequate medical documentation and communicate changes in patient conditions shares a close factual relationship with the events in Mr. Zuniga's case, and accordingly, the widespread practice was the moving force behind his injuries.

112. Because Wexford personnel did not adequately document or otherwise communicate Mr. Zuniga's rapidly deteriorating medical condition to the appropriate personnel, he was not provided with the medical treatment that he clearly needed, which caused him to sustain life-threatening injuries.

113. Accordingly, Wexford's policy and practice of providing inadequate medical documentation and failing to communicate changes in patient conditions to appropriate personnel caused Mr. Zuniga's injuries.

114. NMCD intentionally failed to provide proper supervision and oversight of these practices despite the risk known to it. In fact, NMCD was complicit in failing to keep adequate

prisoner medical records. In NMCD's contract with its prior medical provider from June 2016, it stated:

"In order to provide constitutionally adequate medical care to patient-inmates and to help determine the strategy for completing NMCD's Clinical Data Repository (CDR) and pharmacy systems, a review of electronic health record options has determined that the best strategy moving forward is to procure an Electronic Health Record (EHR) software solution."

115. Yet—seven years later—NMCD has still not implemented an EHR system despite its continuing recognition that an EHR system is necessary for constitutionally adequate healthcare, as reaffirmed in the PSC, which states: "In order to provide constitutionally adequate medical care to inmates, NMCD has determined that it must procure an electronic health record (EHR) software solution." Upon information and belief, no efforts are underway to identify and implement an EHR system.

116. An EHR system would significantly curtail medical recordkeeping abuses and deficiencies, including the destruction and alteration of medical records. An EHR system would also create greater accountability for both NMCD and Wexford.

117. NMCD has been on notice of the medical recordkeeping abuses and inadequacies in its facilities for years, and it has chosen not to implement an EHR system to curb those abuses and deficiencies. Therefore, NMCD has also demonstrated its own persistent pattern and practice of providing constitutionally deficient medical documentation, which was another moving force behind Mr. Zuniga's injuries.

D. Wexford failed to adequately hire, retain, train, and supervise its personnel despite knowing that such practices were necessary to protect patient health, and this failure was a moving force behind Mr. Zuniga's injuries.

118. Wexford's extensive and decades-long patterns of understaffing, delaying off-site medical treatment, poorly documenting prisoner medical appointments, failing to communicate important changes in patients' medical conditions, and generally choosing cost-cutting measures

over patients' well-being evinces Wexford's utter failure to properly hire, retain, train, and supervise its employees and agents.

119. Similarly, the extensive violations of proper protocol in Mr. Zuniga's case provide compelling evidence that Wexford had continuing, widespread patterns and practices of failing to adequately hire, retain, train, and supervise its personnel.

120. As such, Wexford's widespread failures to adequately hire, retain, train, and supervise its personnel were a primary cause of the constitutional violations suffered by Mr. Zuniga. Each of Wexford's failures to conduct necessary examinations deprived Mr. Zuniga of the opportunity to be evaluated, diagnosed, and to be prioritized in receiving the medical treatment that he so desperately needed. Because medical personnel were not adequately trained or supervised to ensure that the proper medical procedures were followed, Mr. Zuniga never received the opportunity to obtain timely off-site medical services. Consequently, he sustained the injuries that resulted in his extensive hospital stay and multiple near-death experiences.

121. Wexford was aware of the need to train and supervise its employees regarding proper medical treatment protocol and documentation as Wexford's personnel would commonly confront situations where they would need to assess patient's medical conditions. This is among the primary tasks that these personnel were hired to do.

122. Additionally, documenting and assessing the next steps in a patient's medical treatment is precisely the type of complex and important decision that requires training and supervision.

123. Wexford's widespread pattern of deficient hiring, retention, training, and supervision presents an obvious potential to violate patients' constitutional rights, as reflected in

the growing number of a lawsuits by prisoners claiming they were denied medical care which caused a long-term disability and/or death.

124. Wexford and NMCD were alerted to an obvious deficiency in Wexford's hiring, retention, training, and supervision through the many prior lawsuits against it alleging unconstitutional medical care. Wexford and NMCD were also put on notice of these deficiencies through the many news articles, cases, and reports from government agencies, court monitors, and former employees informing Wexford of the many ways that it fell short of providing constitutionally adequate medical care.

125. Wexford's extensive and longtime failures to provide adequate care are further evidence of its deliberate indifference and/or gross negligence to the needs of inmates, such as Mr. Zuniga. Likewise, NMCD evinced its deliberate indifference and/or gross negligence to these unconstitutional practices through its refusal to provide proper supervision and oversight of these practices despite the risk known to it.

### **CAUSES OF ACTION**

#### **COUNT I: DENIAL OF MEDICAL CARE IN VIOLATION OF ARTICLE II, § 13 OF THE NEW MEXICO STATE CONSTITUTION**

(Against NMCD and Wexford)

126. Each paragraph of this Complaint is incorporated as if fully restated herein.

127. Under NMSA § 41-4A-3(C), NMCD is liable for its own state constitutional violations and for the unconstitutional conduct of Wexford and the individuals acting under NMCD's authority. *See* NMSA § 41-4A-3(C).

128. Similarly, Wexford is a "public body" for purposes of claims arising under the New Mexico Civil Rights Act, acting under color of state law, and within the course and scope of the authority of NMCD, at all times relevant to this Complaint, and as such, was acting on behalf of

NMCD as a state agency or entity. *See* NMSA § 41-4A-2 and 3. Under NMSA § 41-4A-3(C), Wexford is liable for its own state constitutional violations and for the unconstitutional violations of the individuals acting under its authority. *Id.*

129. In the manner described more fully above, Defendants were aware that Mr. Zuniga's medical condition caused him to face a substantial risk of harm without appropriate action.

130. The abovenamed entities and individuals each possessed responsibility for the decisions that resulted in the violation of Mr. Zuniga's state constitutional right to be free from cruel and unusual punishment regarding the deliberate indifference and/or gross negligence to his serious medical needs while in NMCD custody, as described more fully above.

131. Based on the information personally known to each of the abovenamed entities and individuals at the time that each committed the acts complained of above, each entity and individual was aware of the substantial likelihood that Mr. Zuniga would continue to face a severely painful and potentially life-threatening medical condition unless he received additional medical services that he was not receiving or otherwise scheduled to receive.

132. These entities and individuals were aware of and deliberately disregarded the substantial risk of harm to Mr. Zuniga because of their failures to provide him with constitutionally adequate medical care, as described more fully above. Among other things, these entities and individuals were aware of Mr. Zuniga's substantial risk of harm due to his persistent expressions of intolerable and worsening pain; his decreased mobility, his inability to walk on his own or complete daily tasks without the assistance of fellow prisoners.

133. The deliberate indifference and/or gross negligence of the abovenamed entities and individuals caused Mr. Zuniga to experience worsening, extensive, and unnecessary pain and

suffer from delayed diagnosis of an infection of his spine with corresponding pain and suffering. Ultimately, these harms resulted in Mr. Zuniga being required to undergo emergency spine surgery to treat his osteomyelitis, prevent paralysis and death, and to endure the long-term physical and psychological effects of his permanent condition.

134. Mr. Zuniga's harms were sufficiently serious injuries that a reasonable doctor would find them important and worthy of immediate treatment. Without treatment, Mr. Zuniga's worsening severe pain caused him to lose the ability to take care of his most basic needs so that he could not walk independently or complete daily tasks on his own. By the time his spine infection was diagnosed, his condition was life threatening and he was in danger of a complete spinal cord injury. As it stands, he will suffer life-long severe disabilities from the spinal surgery he was required to undergo. Accordingly, Mr. Zuniga's severe pain and medical conditions significantly affected his daily activities and continue to do so to this day.

135. The medical and security personnel at SNMCF would not or could not provide Mr. Zuniga with necessary medical care, as evidenced by his ongoing complaints of pain and worsening infection while under the supervision of medical personnel at SNMCF. As a result, his period of incarceration became life-threatening—and nearly a death sentence—because his serious medical needs were ignored.

136. Additionally, SNMCF medical and security personnel failed to make special provisions for Mr. Zuniga in light of his serious medical needs. They would not provide assistance, give him additional time to shower and complete tasks, provide any assistance so that he could maneuver around the prison facility, and even harassed him in the shower for taking too long.

137. NMCD was aware of and disregarded the substantial risk that Wexford would expose all NMCD prisoners to unconstitutional conditions of confinement and place them in real

danger of severe harm, including death. NMCD's decision to contract with Wexford for medical services in 2019 and onward was an act of deliberate indifference to the serious medical needs of NMCD prisoners—particularly because NMCD re-hired Wexford without implementing any additional oversights than existed in the parties' previous contract and currently does not exercise its oversight responsibility over Wexford.

138. Defendants' actions and failures to act were unreasonable and undertaken intentionally, with malice, recklessly, gross negligence, and/or with deliberate indifference to Mr. Zuniga's serious medical needs.

139. Defendants' unconstitutional actions and inactions were the cause of Mr. Zuniga's injuries entitling him to compensatory damages, emotional and physical pain and suffering, loss of enjoyment of life, past and future medical expenses, and loss of earning capacity.

**COUNT II: DENIAL OF FUNDAMENTAL RIGHT TO BODILY INTEGRITY IN**  
**VIOLATION OF ARTICLE II, § 18 OF**  
**THE NEW MEXICO STATE CONSTITUTION**  
(Against NMCD and Wexford)

140. Each paragraph of this Complaint is incorporated as if fully restated herein.

141. As previously explained, under NMSA § 41-4A-3(C), NMCD is liable for its own violations of Mr. Zuniga's substantive due process rights to bodily integrity as well as those committed by Wexford and NMCD.

142. Likewise, Wexford is liable for its own violations of Mr. Zuniga's substantive due process rights to bodily integrity as well as those committed by Wexford administrators and medical personnel.

143. Because the abovenamed Defendants' conduct toward Mr. Zuniga was especially demeaning and humiliating concerning Mr. Zuniga's body, these actors have violated Mr. Zuniga's substantive due process right to bodily integrity under the New Mexico State Constitution.

144. Mr. Zuniga has a fundamental right to bodily integrity, personal safety, privacy, and freedom from unlawful invasion and violation of his person, and not to be subjected to an unsafe environment in which he was vulnerable to physical and emotional injury.

145. The abovenamed entities' and individuals' acts were intentional, conscience-shocking, wanton, arbitrary and capricious, and in gross and reckless disregard of, and deliberate indifference to, Mr. Zuniga's constitutional rights. Upon information and belief, these acts were done maliciously and sadistically to cause harm, as they were not reasonably related to any legitimate penological interest.

146. Defendants' acts not only violated Mr. Zuniga's right to bodily integrity, but they also undermined the state's own interests in (1) protecting the integrity and ethics of the medical profession, and (2) protecting vulnerable groups, including poor, elderly, and disabled persons, from abuse and neglect.

147. Mr. Zuniga's bodily integrity was violated when he was forced to go about his day as if he was not in extreme pain and agony. He was forced to make his way in agony through the prison facilities, stand for count, and shower, without assistance, as Defendants stood by watching and harassing him, all while denying him the life-saving medical care which he desperately needed.

148. Defendants' conduct was especially egregious because it involved circumstances where they had time to deliberate rather than make quick decisions. They chose to subject Mr. Zuniga to these terrifying, degrading, and life-threatening circumstances—repeatedly, over time, and after deliberation.

149. Such treatment approximates torture, and its severity implicates Mr. Zuniga's substantive due process rights, particularly in the context of the state constitution, which provides

broader protections than the federal constitution.<sup>3</sup> These government actors were abusing their power to the highest degree and wielding it as an instrument of oppression in violation of Mr. Zuniga's substantive due process rights.

150. Defendants' unconstitutional actions and inactions were the cause of Mr. Zuniga's injuries entitling him to compensatory damages, emotional and physical pain and suffering, loss of enjoyment of life, past and future medical expenses, and loss of earning capacity.

**COUNT III: VIOLATION OF EQUAL PROTECTION UNDER THE LAW**  
**In Violation of Article II, § 18 of the New Mexico State Constitution**  
(Against NMCD and Wexford)

151. Each paragraph of this Complaint is incorporated as if fully restated herein.

152. As previously explained, under NMSA § 41-4A-3(C), NMCD is liable for its own violations of Mr. Zuniga's equal protection rights as well as those committed by Wexford, NMCD and SNMCF.

153. Likewise, Wexford is liable for its own violations of Mr. Zuniga's equal protection rights as well as those committed by Wexford administrators and medical personnel.

154. The abovenamed entities and individuals continuously refused to provide Mr. Zuniga with X-Rays or imaging in May or June of 2022. Mr. Zuniga was repeatedly told that his X-rays were postponed, and Defendants failed to provide a reason for the postponement.

155. Despite his inability to walk or otherwise maneuver himself around the prison facility without his cell mates, he was repeatedly told there was nothing to be done and even lied to by a Lieutenant who promised medical help if Mr. Zuniga left medical and returned to his cell. NMCD and Wexford personnel's collective refusal to acknowledge Mr. Zuniga's blatant and

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<sup>3</sup> See, e.g., *Morris v. Brandenburg*, 2015-NMCA-100, ¶¶ 23, 29 (recognizing that "the New Mexico Constitution provides greater rights than those provided in the federal constitution in the areas of double jeopardy, search and seizure, and equal protection," and noting that Article II, § 18 of the New Mexico Constitution has "the potential for broader protections" than the U.S. Constitution) (internal cites omitted).

persistent disability violated his rights to equal protection of the laws under the New Mexico State Constitution.

156. Mr. Zuniga was similarly situated to other SNMCF prisoners who were provided aide or assistance in all relevant respects: namely, they were provided appropriate imaging and none of them could walk or otherwise maneuver around the prison facility without the assistance of additional personnel or being pushed in a wheelchair.

157. Mr. Zuniga received disparate treatment compared to these similarly situated prisoners, because he was deprived diagnostic treatment and imaging that would have detected his worsening infection and was essentially precluded from accessing medical on his own due to his inability to walk without assistance.

158. The disparate treatment that Mr. Zuniga experienced was not reasonably related to any legitimate penological interest, nor was it substantially related to an important government interest.

159. The arbitrary denial of necessary diagnostic treatment and care was neither substantially related nor rationally related to any state interest, particularly in light of Defendants' comments to Mr. Zuniga that his X-rays had once again been postponed for no reason.

160. Accordingly, Mr. Zuniga's disparate treatment was not supported by any firm rationale or evidence in the record, and his state constitutional right to equal protection of the laws was therefore violated.

161. Defendants' unconstitutional actions and inactions were the cause of Mr. Zuniga's injuries entitling him to compensatory damages, emotional and physical pain and suffering, loss of enjoyment of life, past and future medical expenses, and loss of earning capacity.

**COUNT IV: NEGLIGENT OPERATION OF A PUBLIC BUILDING**  
**Under New Mexico Tort Law and the Tort Claims Act (NMSA § 41-4-6)**  
(Against NMCD and Individual NMCD Defendants)

162. Each paragraph of this Complaint is incorporated as if fully restated herein.

163. In operating the SNMCF and providing medical services at these facilities, NMCD and the Individual NMCD Defendants were under a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

164. NMCD has authority and control over all NMCD correctional facilities along with a consequent duty to operate the facility so as not to endanger the health and safety of those utilizing the facility, including inmates.

165. NMCD did not enforce the PSC, or any other standards of care related to the medical care of NMCD inmates. Instead, NMCD colluded with, conspired with, and ratified dangerous patterns and practices of Wexford set forth throughout this Complaint leading to extreme medical neglect of NMCD inmates under the care of Wexford and NMCD, including Mr. Zuniga. Moreover, NMCD maintained its own policies and practices of routine and extreme medical neglect of its inmates.

166. Defendants' customs, policies, and practices created a general condition of unreasonable risk to NMCD's prisoners due to negligent safety practices concerning identifying and addressing medical emergencies and serious medical conditions.

167. The NMCD Defendants' policy and practice of breaching their duty in the operation of NMCD facilities caused a foreseeable risk of injury to all inmates. The actions and inactions of the NMCD Defendants outlined above created a specific foreseeable risk to Mr. Zuniga and were the cause of Mr. Zuniga's injuries.

168. Defendants wholly failed to exercise reasonable care to prevent and correct these

dangerous conditions at the SNMCF. Defendants ignored the threats to prisoners' health and safety.

169. At all relevant times, these Defendants were acting within the scope of their duties in the operation and/or maintenance of the SNMCF, as they were acting in relation to safety policies necessary to protect those who used this public building.

170. The actions and inactions of Defendants caused injury to Plaintiff.

171. Immunity for any "public employee" is waived for these Defendants' negligence under NMSA § 41-4-6, as all public employee Defendants were acting within the scope of their duties in the operation of the NMCD facilities.

172. Immunity for any "public employee" is waived for these Defendants' negligence under NMSA § 41-4-6, as Mr. Zuniga's injuries arose from an unsafe, dangerous, and defective condition on property owned and operated by the government.

#### **COUNT V: MEDICAL NEGLIGENCE**

##### **Under the New Mexico Tort Claims Act**

(Against NMCD, Wexford (in the alternative), Individual NMCD Defendants, and Board of Regents)

173. Each paragraph of this Complaint is incorporated as if fully restated herein.

174. In operating the SNMCF medical facility, NMCD and the Individual NMCD Defendants had a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

175. In the alternative, in operating the SNMCF medical facility and undertaking the diagnosis, care and treatment of Plaintiff, Wexford's employees and agents had a duty to possess, and apply the knowledge, skill, and care that is used by a reasonably well-qualified healthcare provider in the same or similar circumstances, giving due consideration to the locality involved.

176. In undertaking the diagnosis, care and treatment of Plaintiff, Defendant Board of

Regents' employees and agents had a duty to possess and apply the knowledge, skill, and care that is used by a reasonably well-qualified healthcare provider in the same or similar circumstances, giving due consideration to the locality involved.

177. NMCD has authority and control over all NMCD correctional facilities and the medical units within those correctional facilities, including SNMCF. Additionally, NMCD has clinical oversight of its contractors' medical decision-making and health services operations. Upon information and belief, the duties of the NMCD Secretary of Corrections include oversight of NMCD's medical contractors and the operation and maintenance of healthcare facilities inside NMCD prisons.

178. Moreover, NMCD and the Individual NMCD Defendants must enforce the PSC and take appropriate action if the care provided does not meet NMCD standards, generally accepted medical standards, and/or constitutional definitions of adequate healthcare. Accordingly, the NMCD Defendants are involved in the clinical decision-making and supervision of the SNMCF.

179. The NMCD Defendants failed to take proper enforcement action against Wexford, resulting in inadequate healthcare for its prisoners, including Mr. Zuniga. The failures of NMCD caused Mr. Zuniga harm and injury.

180. Defendants Wexford and the Board of Regents' employees and agents deviated from the applicable standard of care by:

- A. Failing to properly and timely treat Mr. Zuniga's condition;
- B. Failing to properly and timely treat Mr. Zuniga's ongoing pain complaints;
- C. Failing to provide competent care in treating Mr. Zuniga's medical condition;
- D. Failing to develop, employ, monitor, and follow appropriate policies and procedures

about the assessment, treatment, management and oversight of patients, including Plaintiff;

- E. Failing to appropriately and accurately document the treatment, monitoring, evaluations, examinations, and/or diagnoses of Mr. Zuniga;
- F. Failing to timely and appropriately monitor, evaluate, examine, diagnose, and/or treat and reevaluate Plaintiff; and
- G. Failing to appropriately hire, train, and/or supervise employees who provided care to Plaintiff.

181. As a direct and proximate result of the Defendants' negligence, Plaintiff personal injury, emotional distress, pain and suffering, economic injury, and additional damages in an amount to be proven at trial.

182. Immunity for any "public employee" is waived for these Defendants' negligence under NMSA § 41-4-9 and § 41-4-10, as all public employee Defendants were acting within the scope of their duties.

#### **COUNT VI: MEDICAL NEGLIGENCE**

##### **Under New Mexico Tort Law**

(Against Wexford and Memorial Medical Center)

183. Each paragraph of this Complaint is incorporated as if fully restated herein.

184. In undertaking the diagnosis, care and treatment of Mr. Zuniga, Wexford and its employees, staff, and agent 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.

185. In undertaking the diagnosis, care and treatment of Mr. Zuniga, Memorial Medical Center and 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.

186. These Defendants breached their duties and were negligent in the management of Mr. Zuniga's health and well-being.

187. The negligence, errors, and other acts and omissions of these Defendants include, but are not limited to:

- A. Failing to properly and timely treat Mr. Zuniga's condition;
- B. Failing to properly and timely treat Mr. Zuniga's ongoing pain complaints;
- C. Failing to provide competent care in treating Mr. Zuniga's medical condition;
- D. Failing to develop, employ, monitor, and follow appropriate policies and procedures about the assessment, treatment, management and oversight of patients, including Plaintiff;
- E. Failing to appropriately and accurately document the treatment, monitoring, evaluations, examinations, and/or diagnoses of Mr. Zuniga;
- F. Failing to timely and appropriately monitor, evaluate, examine, diagnose, and/or treat and reevaluate Plaintiff; and
- G. Failing to appropriately hire, train, and/or supervise employees who provided care to Plaintiff.

188. As a direct and proximate result of these Defendants' negligent acts or omissions, Plaintiff suffered personal injury, emotional distress, pain and suffering, economic injury, and additional damages in an amount to be proven at trial.

189. These acts and failures to act by these Defendants were intentional, willful, wanton, and in reckless disregard for the safety and well-being of Mr. Zuniga entitling Plaintiff to an award of punitive damages.

190. All acts complained of herein were authorized, participated in, or ratified by Wexford and Memorial Medical Center, or their administrators, managers, officers, directors, or shareholders.

**COUNT VII: BREACH OF CONTRACT, THIRD PARTY BENEFICIARY**  
**In Violation of New Mexico Contract Law**  
(Against NMCD and Wexford)

191. Each paragraph of this Complaint is incorporated as if fully restated herein.

192. As an NMCD prisoner in the custody of NMCD, Mr. Zuniga was a third-party beneficiary to NMCD's contract with Wexford that was in place at all times relevant to this Complaint and through which Wexford was obligated to provide Mr. Zuniga adequate medical care.

193. As an intended beneficiary to the contract for medical services between NMCD and Wexford, Mr. Zuniga has standing to enforce the terms of the contract. *See, e.g., Owens v. Haas*, 601 F.2d 1242, 1248-1251 (2d Cir. 1979), *cert. denied*, 444 U.S. 980 (1979) (holding that "it would appear likely that the prisoners can claim third party beneficiary status as ones to whom a duty is owed" and enforce the contract between the U.S. Bureau of Prisons and the County of Nassau), *cited approvingly by Moaz v. Denver Int'l Airport*, 747 F. App'x 708, 710 (10th Cir. 2018).

194. The scope of services identified in the PSC includes an expansive explanation of requirements for Wexford's "medical services program," "inpatient infirmary: medical care services," "tertiary health care services," nutrition and therapeutic diets," "emergency preparedness/medical disaster plan," and "safety, sanitation, and infection control," among many others.

195. Each of these sections almost exclusively concerns NMCD prisoners and is meant to benefit them.

196. Additionally, provision 4 of the PSC required Wexford “to abide by any and all rules and regulations set for by the Agency [NMCD] so as not to...jeopardize the health and safety of any employees, inmates, or the general public” – a clear and unequivocal statement indicating that NMCD prisoners are intended to benefit through the protections and terms provided in the PSC.

197. As an intended third-party beneficiary to the PSC, Mr. Zuniga has standing to enforce the terms of the contract.

198. During the timeframe relevant to this Complaint, Wexford and its agents materially breached multiple provisions of Wexford’s contract with NMCD, and these violations were a cause of Mr. Zuniga’s injuries.

199. Mr. Zuniga’s repeated complaints that SNMCF personnel were ignoring Mr. Zuniga’s serious medical condition were more than sufficient to provide NMCD and Wexford with notice of the abovementioned contractual violations, and Wexford had multiple subsequent opportunities to cure them.

200. NMCD and Wexford are liable for damages caused by their employees and agents’ breach of contract.

201. As a result of the breach of contract, Mr. Zuniga suffered injuries and damages, including consequential damages, in an amount to be proven at trial.

**COUNT VIII: CIVIL CONSPIRACY TO DENY MEDICAL CARE**  
**In Violation of Article II, § 13 of the New Mexico State Constitution**  
**and New Mexico Tort Law**  
(Against NMCD, Individual NMCD Defendants, and Wexford)

202. Each paragraph of this Complaint is incorporated as if fully restated herein.

203. The facts illustrated above show a conspiracy on the part of NMCD, Wexford, and their employees and agents to deny Mr. Zuniga necessary, proper, and constitutionally minimal medical care under the state constitution and under New Mexico tort law.

204. Minimally, from the period of May of 2022 through July 28, 2022, the abovenamed Defendants entered into an agreement, or a shared general objective, to deny Mr. Zuniga the off-site medical care that he desperately needed.

205. These Defendants engaged in a collective concerted action to prevent Mr. Zuniga from receiving the specialized medical care he required, all doing their part to continually deny him access to off-site medical facilities and doctors.

206. As a result of this conspiracy and the abovenamed Defendants' conduct during the conspiracy, Mr. Zuniga suffered severe physical and emotional distress.

**COUNT IX: POLICY AND PRACTICE OF DENIAL OF MEDICAL CARE**  
**In Violation of Article II, § 13 of the New Mexico State Constitution**  
(Against NMCD and Wexford)

207. Each paragraph of this Complaint is incorporated as if fully restated herein.

208. As previously explained, under NMSA § 41-4A-3(C), NMCD is liable for its own policies and practices which constitute cruel and unusual punishment against Mr. Zuniga, as well as the policies and practices of Wexford which amount to cruel and unusual punishment against Mr. Zuniga. And Wexford is liable for its own policies and practices amounting to cruel and unusual punishment against Mr. Zuniga.

209. As a private corporation acting pursuant to its agreement with NMCD to provide medical services to New Mexico State prisoners, Wexford was at all relevant times to this Complaint acting under color of, or within the course and scope of, the authority of NMCD. Within NMCD's authority, Wexford was acting as the provider of healthcare services to prisoners

incarcerated at SNMCF. Accordingly, both NMCD and Wexford were responsible for the creation, implementation, oversight, and supervision of all policies and procedures followed by employees and agents of Wexford and SNMCF/NMCD.

210. Mr. Zuniga's injuries were caused by Wexford's policies and practices, which are imputed to NMCD and for which NMCD is liable.

211. Wexford maintains a policy, practice, and custom of under-reporting the severity of medical and mental health emergencies and denying appropriate medical and mental health care to prisoners. On information and belief, Wexford medical staff working in NMCD facilities lack the necessary medical backgrounds to provide adequate care and are trained to ignore or under-report symptoms of medical and mental health emergencies, which amounts to deliberate indifference to the serious medical needs of prisoners presenting symptoms of such emergencies, including Mr. Zuniga.

212. On information and belief, Wexford supervises its employees to ignore or under-report symptoms of medical and mental health emergencies, which amounts to deliberate indifference to the serious medical needs of prisoners presenting symptoms of such emergencies, including Mr. Zuniga.

213. On information and belief, Wexford ratifies the conduct of its employees who ignore or under-report symptoms of medical and mental health emergencies through review and approval of these employees' performance, and through the decision to continue the employment of such individuals who ignore and under-report medical and mental health emergencies of NMCD prisoners, which amounts to deliberate indifference to the serious medical needs of prisoners presenting symptoms of such emergencies, including Mr. Zuniga.

214. At all times relevant to this Complaint, Wexford and NMCD had notice of a widespread practice by their employees and agents at SNMCF and other NMCD facilities under which prisoners with serious medical conditions, including Mr. Zuniga, were routinely denied access to proper or sufficient medication and medical attention. Upon information and belief, it was common to observe prisoners of SNMCF and NMCD with clear symptoms of serious medical and/or mental concerns whose requests for medical care were routinely denied or completely ignored. Upon information and belief, a significant portion of these denials of medical and mental health care resulted in substantial injury or death.

215. More specifically, there was a widespread practice under which employees and agents of Wexford and NMCD, including correctional officers and medical personnel, failed or refused to: (1) report, diagnose, and properly examine, monitor, and treat prisoners with serious medical and/or mental health conditions, including failing to provide proper medications to prisoners with serious medical and/or mental health conditions; (2) respond to prisoners who requested medical and/or mental health services; (3) respond to prisoners who exhibited clear signs of medical and/or mental health need or illness; (4) adequately document and communicate the medical and mental health needs of prisoners to the appropriate correctional officers and/or medical or mental health staff; or (5) timely refer prisoners for emergency or other offsite medical services.

216. Additionally, there was a widespread practice under which Wexford personnel severely understaffed its medical and mental health facilities and failed adequately to train and supervise its personnel on necessary medical and mental health procedures.

217. These widespread practices were allowed to proliferate because Wexford and NMCD directly encouraged, and were the moving forces behind, the specific misconduct at issue.

Wexford and NMCD also failed to adequately hire, retain, train, supervise, and control correctional officers and medical personnel by failing to adequately punish and discipline prior instances of similar misconduct, thereby directly encouraging future abuses like those which harmed Mr. Zuniga.

218. Wexford and NMCD knew of the substantial risk of serious or fatal consequences that could be caused by their unconstitutional policies, practices, customs, failures to train, and failures to supervise, hire, and retain appropriately credentialed staff, as occurred in Mr. Zuniga's case. However, they intentionally continued to perpetuate these unconstitutional policies and practices despite the known risks.

219. NMCD is sued herein for its own unconstitutional patterns and practices and because Wexford was acting on its behalf when it maintained its unconstitutional policies, practices, and customs; failed to train and supervise; failed to hire and retain adequately qualified medical personnel; and ratified its employees' and agents' misconduct, all of which amounts to deliberate indifference to prisoners' serious medical and/or mental health needs.

220. These policies and conduct were the moving force behind the violations of Mr. Zuniga's state constitutional rights and his injuries. Mr. Zuniga's injuries were caused by employees and contractors of NMCD and Wexford, including but not limited to the individually named Defendants, who acted pursuant to the unconstitutional policies and practices of NMCD and Wexford while engaging in the misconduct described in this Complaint.

221. Upon information and belief, along with its October 5, 2023, admission they pay \$0.00 for any inpatient hospitalization of 24 hours or more, Wexford maintained these policies and practices in order to maximize profit and without regard to its constitutional and medical obligations to NMCD prisoners who were entrusted to Wexford's care.

222. Plaintiff has been harmed by the unconstitutional conduct of these Defendants and seeks damages in an amount to be proven at trial.

**JURY DEMAND**

223. Plaintiff respectfully demands a six-person jury on all issues so triable.

**RELIEF REQUESTED**

**WHEREFORE**, Plaintiff requests judgment as follows:

A. The statutory damages legally allowable under the New Mexico Civil Rights Act against both NMCD and Wexford separately as distinct public bodies each individually liable for up to “the maximum recovery limit” outlined in NMSA § 41-4A-6;

B. Compensatory damages against all Defendants, jointly and severally, in an amount to be proven at trial under the New Mexico Tort Claims Act, and New Mexico tort, contract, and common law;

C. Punitive damages in an undetermined amount against Wexford and Memorial Medical Center;

D. Costs incurred by Mr. Zuniga,

E. Pre-judgment and post-judgment interest;

F. Reasonable attorneys’ fees; and

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

Respectfully Submitted:

COLLINS & COLLINS, P.C.

/s/ Parrish Collins

Parrish Collins

Francheska Bardacke

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DELARA | SUPIK | ODEGARD P.C.

By /s/ Alisa Wigley-DeLara

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*Attorneys for Plaintiff*

**THIS IS TO CERTIFY** that on this 15th day of February, 2024 a copy of the foregoing pleading was filed electronically through the Odyssey File/Serve System, which caused all parties to be served by electronic means.

**/s/ Parrish Collins**  
Parrish Collins

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

September 6, 2022

**NOTICE OF TORT CLAIMS AND CLAIMS UNDER THE NEW MEXICO CIVIL RIGHTS  
ACT**

***Via Fax and Email***

New Mexico Corrections Department  
P.O. Box 27116  
Santa Fe, NM 87502-0116  
***Fax: (505) 827-8533***  
***Email: Trisha.Cox@state.nm.us and  
Brianne.Bigej@state.nm.us***

***Via Fax and Email***

Office of General Counsel  
New Mexico Corrections Department  
P.O. Box 27116  
Santa Fe, NM 87502-0116  
***Fax: (505) 827-8533***

***Via Fax***

Office of the Secretary  
Alisha Tafoya Lucero  
P.O. Box 27116  
Santa Fe, NM 87502-0116  
***Fax: (505) 827-8533***

***Via Fax and Email***

Risk Management Claims Bureau  
P.O. Box 6850  
Santa Fe, NM 87502  
***Fax: (505) 827-2969***  
***Email: Rachel.Lovato@state.nm.us and  
PAC.claims@state.nm.us***

***Via Fax***

Warden's Office  
Southern New Mexico Correctional  
Facility  
P.O. Box 639 1983 Joe R. Silva  
Boulevard Las Cruces, New Mexico  
88004-0639

***Via Fax***

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

Our Client: Carlos Zuniga (#67532)  
Subject: Notice of Claims and Preservation of Evidence  
Defendants: New Mexico Corrections Department (NMCD), Wexford Health Sources  
Date of Incidence: May 1, 2022 – Ongoing  
Location of Interest: Southern New Mexico Correctional Facility ("SNMCF")

## **Notice of Claims and Demand for Preservation of Evidence Under Penalty of Spoliation**

Gentlemen\Mesdames:

We are writing on behalf of the above captioned client and matters. This letter is intended to provide written notice to the above captioned parties under the Tort Claims Act (NMSA 1978, §§ 41-4-1 to – 4-27) and the New Mexico Civil Rights Act regarding the actions and inaction of Southern New Mexico Correctional Facility (“SNMCF”), New Mexico Corrections Department (NMCD), Wexford Health Sources, Inc., and the State of New Mexico (and their employees, staff contractors and other agents) for the reckless, grossly indifferent disregard for the civil rights and safety of Carlos Zuniga outlined below.

### **Facts:**

Mr. Zuniga started feeling pain in his back at the beginning of May 2022. The pain increased over the next few days until he saw medical. At medical they refused care stating that there was no medical available. In early June 2022 Mr. Zuniga still had pain in his back. Mr. Zuniga was taken to medical again. Medical kept telling Mr. Zuniga that his X-Rays were postponed without a reason.

During the end of June 2022, Mr. Zuniga was emergency transported to Memorial Hospital where he received X-Rays for his back. Mr. Zuniga also received a CAT scan at the emergency room. Mr. Zuniga was taken back to SNMCF that night.

Mr. Zuniga dealt with this pain throughout July 2022 and relied on cell mates to help him walk. On July 28, 2022, Mr. Zuniga was released from prison. He sought immediate medical attention at UNMH where he was diagnosed with osteomyelitis for which he underwent surgery.

### **Preservation of Evidence:**

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

1. The full and complete inmate file for Carlos Zuniga to include all grievance and disciplinary files.
2. All booking and intake documents for Carlos Zuniga.
3. All medical records obtained or otherwise received for Carlos Zuniga.
4. All requests by NMCD, its staff, agents, or contractors, for Carlos Zuniga’s medical records from any outside medical providers.
5. All correctional officer daily logs for the duration for May 1, 2022 and ongoing for any officer assigned to any cell(s), pod(s) or unit(s) where Carlos Zuniga was housed.
6. All cell check logs for checks on Carlos Zuniga for May 1, 2022 and ongoing.

7. All recorded calls involving Carlos Zuniga as a party to the call.
8. All RHU logs for all units, pods and cells in which Carlos Zuniga was housed at any time during his incarceration with NMCD.
9. All video of for all units, pods and cells in which Carlos Zuniga was housed at any time during his incarceration with NMCD along with all video of the hallways leading to and from those units, pods and cells.
10. All video from and of the control booth or desk from which cameras are monitored in the pod in which Carlos Zuniga was housed.
11. For August 30, 2022 and ongoing, all video of any incident between Carlos Zuniga and NMCD staff, employees, agents, contractors or other agents that generate any kind of report or result in disciplinary, reclassifications or transfer.
12. Any other "Writings, Records and Photographs" as defined under Rule 11-1001 of the New Mexico Rules of Evidence:
  - a. A "writing" consists of letters, words, numbers, or their equivalent set down in any form.
  - b. "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.
  - c. "photograph" means a photographic image or its equivalent stored in any form.
13. Any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail in connection with the subject incident. All electronic records must be maintained and preserved even if there are hard copy printouts of said records.
14. All written notes, recordings, meeting minutes, written correspondence of any kind, witness interviews, witness statements, reports to regulatory authorities and any other writing related to or associated with or related to Carlos Zuniga.

Please also preserve all items above in the original electronic format in which they are entered, created, stored, maintained, and archived.

Please contact us should you have any questions. Thank you for your consideration of this matter.

Sincerely,

COLLINS & COLLINS, P.C.



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Parrish Collins  
PC/km