

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

Case assigned to Mathew, Francis J.

No.: D-101-CV-2023-01602

GERONIMO VIGIL,

Plaintiff,

v.

NEW MEXICO CORRECTIONS DEPARTMENT;
WEXFORD HEALTH SOURCES, INC.;
ALISHA TAFOYA, Secretary of Corrections;
WENCE ASONGANYI, Health Services Administrator;
HOPE SALAZAR; and DOE EMPLOYEES,
STAFF AND AGENTS OF NMCD AND WEXFORD,

Defendants.

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

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

JURISDICTION AND VENUE

1. All acts complained of herein occurred in Guadalupe County and Valencia County, New Mexico.
2. A Notice of Claims was sent on November 9, 2021 and January 18, 2022, pursuant to the New Mexico Tort Claims Act (NMSA 1978, § 41-4-16) and the New Mexico Civil Rights Act (NMSA 1978, § 41-4A-1, et seq.).

3. Defendants had actual notice of the claims.

4. Jurisdiction and venue are proper over the New Mexico Corrections Department (“NMCD”) and Wexford Health Sources, Inc. (“Wexford”), and these entities respective employees, staff, and agents 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 1978, §§ 41-4A-1 through 41-4A-13), and New Mexico tort, contract, and common law.

PARTIES AND CULPABLE ACTORS

5. Mr. Vigil was at all relevant times incarcerated at the Guadalupe County Correctional Facility (“GCCF”) and the Central New Mexico Correctional Facility (CNMCF”), NMCD prison facilities located in Santa Rosa, Guadalupe County, New Mexico, and Los Lunas, Valencia County, New Mexico respectively.

6. 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. Vigil.

7. Defendant Wexford is a foreign corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico. Wexford, by the terms of Professional Services Contract # 20-770-1200-0043 (the “PSC”), was contracted by NMCD for the purposes of providing medical care to inmates in the NMCD prison system, including Mr. Vigil. Upon information and belief, the PSC was executed in Santa Fe, New Mexico. The term of the PSC began on or about October 18, 2019, and was in effect at all times relevant to this Complaint.

8. 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 § 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 § 9-3-12. Defendant Tafoya had oversight authority and served as the final decision-making authority concerning medical care provided to NMCD inmates.

9. 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.

10. 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.

11. At all times relevant to this Complaint, the following titled positions, the individual holders of which have yet to be identified, were each responsible for overseeing the training, staffing, and supervision of medical, psychiatric, mental health and behavioral health personnel operating the GCCF and CNMCF facilities:

- a) GCCF Health Services Administrator,
- b) CNMCF Health Services Administrator,
- c) GCCF Medical Director,
- d) CNMCF Medical Director,

- e) Wexford Statewide Medical Director,
- f) Wexford Statewide Director of Nursing,
- g) Wexford Regional Medical Director,¹
- h) Wexford Regional Manager,
- i) Wexford Regional Director of Nursing,
- j) Wexford Quality Improvement Coordinator,
- k) GCCF Director of Nursing,
- l) CNMCF Director of Nursing,
- m) Responsible Health Authority and Psychiatrist(s),
- n) All Wexford personnel involved in Utilization Management/Review, and
- o) Wexford Site Medical Directors.

12. 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. Vigil 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. Vigil.

13. 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 GCCF and CNMCF, and such oversight responsibilities included the proper implementation of

¹ References to “regional” personnel refer to whichever regional designation New Mexico falls under based on the employer’s organizational structure.

and adherence to NMCD policies by its employees and contractors. They are sued in their individual capacities.

14. Doe Corrections Officers (“COs”) were the unit officers, pod officers and control officers assigned to Mr. Vigil’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 Mr. Vigil while he was housed at the GCCF and CNMCF. 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 Mr. Vigil. They are sued herein in their individual capacities..

FACTUAL BACKGROUND

Medical Neglect at NMCD

15. Mr. Vigil was 34 years old at the time the ongoing medical neglect began in September of 2021.

16. Mr. Vigil had a known history of IV drug use.

17. Mr. Vigil had an acute onset of lower back pain starting on September 21, 2021.

18. Over the course of the next several days, Mr. Vigil’s pain became debilitating. He was unable to void and was having difficulty walking.

19. Mr. Vigil made repeated requests for medical assistance to medical personnel and corrections staff. His requests for assistance were ignored or inadequately addressed.

20. The Wexford medical personnel failed to appropriately assess Mr. Vigil’s ongoing back complaints and/or signs of infection at any time between September 21, 2021 and September 29, 2021.

21. The NMCD corrections staff failed to identify the need for an emergent transport of Mr. Vigil at any time between September 21, 2021 and September 29, 2021.

22. Due to the delay in a timely assessment and/or referral associated with Mr. Vigil's low back pain, Mr. Vigil's condition worsened and led to a diagnosis of osteomyelitis, spinal abscess, and sepsis.

23. The actions and failures to act by Wexford medical personnel were grossly negligent, fell below the standard of care, and caused significant and permanent injury to Mr. Vigil.

Emergency Treatment and Hospitalizations

24. On September 29, 2021, Mr. Vigil was transported to the Guadalupe County Hospital with complaints of low back pain. At that time, he complained of pain at a level 10 out of 10 with an inability to get up or walk.

25. A CT scan of his lumbar spine and lab work was recommended. The labs were abnormal and the urinalysis was abnormal. The CT Scan revealed an intramuscular hematoma or abscess associated with the right gluteus medius muscle.

26. Mr. Vigil was admitted to the hospital for further care and started on antibiotics to include Vancomycin injections.

27. The following morning Mr. Vigil was evaluated with continued complaints of pain in his right hip and sacral area. He was diagnosed with a right gluteus medius mass thought to be an abscess. An IR or surgical consult for source control was recommended with calls placed to hospitals in the Albuquerque and Santa Fe areas.

28. At 1940 hours on September 30, 2021, Mr. Vigil was transferred to UNM Hospital for a higher level of care. He reported lower back pain for the past two weeks, rectal pain for the past ten (10) days, difficulty voiding, and an abscess in his butt area. The course and duration of

his symptoms was noted as constant and worsening with severe, sharp and stabbing pain with swelling. His pain was rated at a level 10 out of 10.

29. A CT of his abdomen and pelvis with contrast was obtained and revealed 1) asymmetric swelling and inflammation centered within the right piriformis muscle with possible small associated intramuscular abscess and significant regional inflammation, and 2) tiny locule of gas within the thecal sac at L5 level.

30. Mr. Vigil was diagnosed with right piriform abscess with extension into L5 thecal sac and admitted in guarded condition under Neurosurgery for further evaluation.

31. After further evaluation by specialists and diagnostic testing, Mr. Vigil was found to have epidural abscesses extending from L3 through S2 with cauda equina-like symptoms. On October 2, 2021, Mr. Vigil underwent bilateral L3, L4, L5, and S1 hemilaminectomies, evaluation of epidural abscess and fluoroscopy.

32. Between October 2, 2021 and October 11, 2021, Mr. Vigil was in-patient at UNMH recovering from surgery and continuing with antibiotic therapy. While his condition was slowly improving, he still had pain complaints, weakness, tingling, difficulty voiding, and muscle spasms.

33. On October 11, 2021, Mr. Vigil was discharged from UNMH. Mr. Vigil's post-surgical condition required the capabilities of a skilled nursing facility, but he was not discharged to a skilled nursing facility. Instead, he was returned to NMCD custody at the CNMCF placed in the Long Term Care Unit with instructions to continue IV Nafcillin infusion, daily wound care, and physical therapy.

34. Mr. Vigil's injury, emergency treatment, hospitalizations, imaging, and surgery were caused by the failure to appropriately evaluate, diagnose, treat, and refer Mr. Vigil for a

higher level of care which led to a delayed evaluation of low back pain and diagnosis of osteomyelitis, spinal abscess, and sepsis.

35. Because of these failures, Mr. Vigil suffered severe and permanent physical injuries, severe emotional distress, pain and suffering, and morbidity.

36. Mr. Vigil continues to have back pain and weakness, which has interfered with his daily activities, his ability to sleep, and has increased his emotional stress related to his injury.

37. Defendants Wexford and Doe Medical providers were all aware that Mr. Vigil was complaining of debilitating back pain and exhibiting signs of infection, but took no meaningful action to address his complaints. Instead, these Defendants failed to conduct a timely and appropriate evaluation and timely refer Mr. Vigil for a higher level of care.

38. Despite multiple opportunities to provide care to Mr. Vigil and refer him to a higher level of care, Defendants Wexford and the Doe Medical providers were grossly negligent and deliberately indifferent to his serious medical needs. The result of the reckless disregard and deliberate indifference to his serious medical condition caused him significant harm, prolonged pain and suffering, and life-long disability.

39. None of these medical professionals took any action to ensure that Mr. Vigil was sent to an off-site medical provider or otherwise provided with necessary care despite knowing that he required additional medical services in order to safeguard his health and wellbeing.

40. Upon information and belief, Doe Corrections Officers made observations of and received complaints from Mr. Vigil regarding his ongoing pain, infection, and need for emergency medical treatment, and no action was taken to ensure Mr. Vigil received medical care.

A. WEXFORD AND NMCD PERSONNEL VIOLATED NUMEROUS CONTRACTUAL PROVISIONS AND NMCD, RULES, POLICIES, AND PROCEDURES

41. The GCCF and CNMCF are operated in accordance with all NMCD rules, policies, and procedures.

42. NMCD is responsible for contracting medical services for all NMCD facilities, including the GCCF and CNMCF, and contracted with Defendant Wexford to provide medical services to all NMCD inmates in accordance with the terms of the PSC. NMCD maintained its responsibility for the care, health, safety, and medical treatment of all detainees in its facilities.

43. Under the PSC, Wexford was acting as the apparent and actual agent, servant, and contractor of NMCD and was responsible for the care, health, safety, and proper medical treatment of all prisoners in NMCD's facilities, including Mr. Vigil. Pursuant to the PSC, NMCD adopted Wexford's policies, practices, habits, customs, procedures, training, and supervision as its own, and Wexford adopted NMCD's policies, practices, habits, customs, procedures, training, and supervision as its own. Wexford acted by and through its employees, staff, agents and assigns who are named in their individual capacities.

44. Under the terms of the PSC § 9, Wexford and its agents and employees "are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico."

45. 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.

46. The explicit terms of the PSC required Wexford to comply with NMCD's rules, policies, and procedures, which were frequently referenced in the PSC. Accordingly, both

Wexford and NMCD knew of these policies and knew that they were not being followed by Wexford and NMCD personnel.

47. Upon information and belief, Defendants Tafoya, Asonganyi, and Salazar had oversight responsibility over Wexford and its employees and agents to ensure compliance with the terms of the PSC and to ensure compliance with NMCD rules, policies, and procedures.

48. Wexford routinely violated NMCD rules, policies, and procedures in the provision of medical care to NMCD inmates, including the care provided to Mr. Vigil.

49. Defendants Wexford and the Doe Medical Provider Defendants violated NMCD rules, policies, and procedures with respect to the medical care provided to Mr. Vigil.

50. NMCD and the individual NMCD Defendants did not intervene to correct the violations, and NMCD and the individual NMCD Defendants both acquiesced and colluded in the violations, and actively violated its own rules, policies and procedures.

51. As a result of the violations of NMCD rules, policies and procedures by all Defendants, Mr. Vigil received constitutionally inadequate medical services, his physical condition deteriorated severely, and he now suffers from a life-long disability.

52. In failing to address Mr. Vigil's medical needs, Wexford and NMCD personnel violated the following NMCD policies, among others:

- 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."
- 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.”

- CD-170100(G): “A written individual treatment plan is required for inmates requiring close medical supervision, including chronic and convalescent care.”
- 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.”
- 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.”
- CD-170100(GG): “Inmates with disabilities shall be housed in a manner that provides for their safety and security.”
- 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.”
- CD-170101(J)(4): “Urgent or emergency transports will be conducted immediately upon the determination by the medical staff that it is necessary.”
- 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 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."

- CD-173100(A)(1): "When qualified health personnel, the local health care authority, the Warden, or the Shift Commander identifies an emergency medical situation that could result in the loss of life or serious harm to an inmate, he or she will immediately call 911 and request ambulance transport for the inmate to the nearest appropriate health care facility."
- 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."

53. Because the Defendants violated the above policies, Mr. Vigil received constitutionally inadequate medical services, and his physical condition deteriorated severely. The actions of Defendants caused Mr. Vigil severe and permanent harm.

54. The terms of the PSC were clearly meant to benefit the prisoners in NMCD's custody, making Mr. Vigil an intended third-party beneficiary of the PSC contract. NMCD and Wexford breached their contractual duties to provide necessary and proper medical care to Mr. Vigil.

B. WEXFORD'S WIDESPREAD PATTERNS AND PRACTICES OF PROVIDING UNCONSTITUTIONAL MEDICAL CARE WERE THE MOVING FORCES BEHIND THE INJURY TO MR. VIGIL AND WERE KNOWN TO NMCD.

55. Wexford maintained various widespread patterns, practices and de facto standard operating procedures both in New Mexico and throughout the United States, which contributed to his severe injuries, including:

- a) Failing to report, diagnose, and properly examine and treat prisoners with serious medical and/or mental health conditions;
- b) Delaying or denying patient referrals to necessary emergency or other offsite medical services;
- c) Severely understaffing its medical and mental health facilities;
- d) Failing to provide adequate medical documentation or communicate changes in patient conditions to the appropriate correctional officers and/or medical or mental health staff;
- e) Alteration, concealment and destruction of medical records.
- f) Failing to adequately hire, retain, train, and supervise its employees and agents on procedures necessary to protect patients' health.
- g) Failure to reprimand, provide additional training, retrain or take any other corrective action against Wexford medical providers engaging in cruel, callous and unconstitutional denial of medical care to inmates. Instead, Wexford corporate and supervisory personnel actively collaborate with and direct Wexford medical providers in a manner resulting in the routine denial of medical care to NMCD inmates thus ratifying the behavior.
- h) 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. Vigil's injuries.

i) As in the instant case, Wexford medical providers' signatures are largely illegible making the identification of medical providers from the medical records impossible. Due to the persistent nature, and the fact that legible medical records, signatures, and title of the medical provider are mandated by NMCD policy CD-170801, this upon information and belief is deliberate.

j) Routine failure to conduct differential diagnoses on inmate patients.

56. NMCD and Wexford have a longstanding policy and practice, directed, supervised and/or ratified by NMCD supervisory personnel, the NMCD Individual Defendants, and/or Wexford supervisory personnel 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 a 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; (5) timely refer prisoners for emergency or other offsite medical services, or (6) intervene in any way to protect the health and safety of inmates.

57. These practices, amounting to standard operating procedures (SOP), are clearly illustrated in court cases spanning decades throughout the United States. In addition, the

practices/SOP have been extensively and expansively covered by the media including New Mexico media.

58. The practices/SOP were present under a past contract with NMCD and were the basis for termination of the contract with Wexford in 2007. Yet, NMCD saw fit to bring Wexford back in 2019 despite the obvious risks to NMCD inmate lives and health.

59. NMCD and the individual NMCD Defendants had knowledge, through its own institutional experience, with Wexford's pervasive and persistent constitutionally deficient medical care. In addition, NMCD and the individual NMCD Defendants can be imputed knowledge from all the cases and media reports documenting the same.

60. NMCD and the individual NMCD Defendants had knowledge of Wexford's constitutionally deficient and/or negligent provision of medical care of inmates as NMCD and Wexford have been named defendants in a multitude of lawsuits raising such allegations since 2019 up to the present date.

61. Rather than take corrective action or intervene in any meaningful way, NMCD and the individual NMCD Defendants were complicit, acquiesced in and actively aided in each of the Wexford practices set forth above.

62. In essence, Wexford's medical care of NMCD prisoners effectively amounted to no medical care at all, a fact of which NMCD Defendants are well aware.

63. Wexford and the NMCD Defendants knew of the substantial risk of serious or fatal consequences that the practices above caused in the past as well as the ongoing harm to NMCD inmates, yet they colluded and conspired to maintain those policies and practices.

64. Upon information and belief, Wexford maintained their constitutionally deficient practices in order to maximize profit and without regard to its constitutional and medical obligations to NMCD prisoners, including Mr. Vigil, who were entrusted to Wexford's care.

65. The practices set forth throughout this complaint were the moving forces behind the misconduct at issue in the instant case.

66. As a result of Defendants' unlawful conduct, Mr. Vigil suffered serious and permanent personal injuries, permanent disability, emotional and physical pain and suffering, morbidity, loss of enjoyment of life, future medical expenses and future rehabilitation expenses entitling him to an award of compensatory and punitive damages.

67. Punitive damages or exemplary damages are appropriate against the Defendant Wexford as the actions and inactions of the individual Defendants were intentional, malicious, callous, cruel, and wanton and undertaken with deliberate indifference to Mr. Vigil's health and safety and were adopted and ratified by Wexford.

68. 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.

COUNT I: NEGLIGENT OPERATION OF A PUBLIC BUILDING UNDER NEW MEXICO TORT LAW AND THE TORT CLAIMS ACT, NMSA § 41-4-6 (AGAINST DEFENDANTS NMCD AND NMCD INDIVIDUAL DEFENDANTS)

69. Each Paragraph of this Complaint is incorporated as if fully stated herein.

70. In operating the GCCF and CNMCF and providing medical services at these facilities, NMCD and the Individual NMCD Defendants were all 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.

71. 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.

72. 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. Vigil. Moreover, NMCD maintained its own policies and practices of routine and extreme medical neglect of its inmates.

73. 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.

74. 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. Vigil and was the cause of Mr. Vigil's injuries.

75. Defendants wholly failed to exercise reasonable care to prevent and correct these dangerous conditions at the GCCF and CNMCF. Defendants ignored the threats to prisoners' health and safety.

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

77. The actions or inactions of Defendants caused injury to Mr. Vigil.

78. 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.

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

**COUNT II: NEGLIGENT OPERATION OF A MEDICAL FACILITY UNDER
NEW MEXICO TORT LAW AND THE NEW MEXICO TORT CLAIMS ACT –
NMSA § 41-4-9 (AGAINST DEFENDANTS NMCD AND
NMCD INDIVIDUAL DEFENDANTS)**

80. Each Paragraph of this Complaint is incorporated as if fully stated herein.

81. In operating the medical facilities at the GCCF and CNMCF, NMCD and the NMCD individual Defendants were all 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.

82. NMCD has authority and control over all NMCD correctional facilities and the medical units within those correctional facilities.

83. NMCD and the individual NMCD Defendants did not enforce the PSC, or any other standards of care related to the medical care of NMCD inmates generally or specifically the care provided to Mr. Vigil. Instead, the NMCD Defendants colluded 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, including Mr. Vigil. Moreover, NMCD and the individual NMCD Defendants maintained its own policies and practices of routine and extreme medical neglect of its inmates.

84. NMCD and the individual NMCD Defendants operated the medical facilities at the GCCF and CNMCF.

85. The NMCD Defendants had authority and control over these medical units, which included oversight and control over of NMCD's medical contractors.

86. NMCD and the Individual NMCD Defendants were required to enforce the PSC and take action against Wexford if the care provided did not meet appropriate standards and NMCD policies and procedures, such that NMCD and the individual NMCD Defendants were involved in the clinical decision-making and supervision of medical units inside NMCD facilities.

87. The actions and inactions of Defendants in the operation of these medical units caused injury to Mr. Vigil.

88. Immunity for any "public employee" is waived for these Defendants' negligence under NMSA § 41-4-9, as all public employee Defendants were acting within the scope of their duties in the operation of these medical facilities or clinics.

**COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN
VIOLATION OF NEW MEXICO COMMON LAW
AGAINST DEFENDANT WEXFORD AND ARTICLE II, § 13 OF THE NEW
MEXICO CONSTITUTION AGAINST DEFENDANTS NMCD AND WEXFORD**

89. Each Paragraph of his Complaint is incorporated as if fully stated herein.

90. NMCD did not enforce the 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 Defendant Wexford, including Mr. Vigil.

91. Wexford failed to provide timely evaluation and treatment to Mr. Vigil, which amounted to the denial of medical care.

92. The deliberate denial of proper and necessary medical care to protect the health and safety of Mr. Vigil was extreme, outrageous, socially reprehensible, and beyond the bounds of common decency.

93. Mr. Vigil was totally reliant upon all Defendants for the provision of necessary and proper medical care.

94. Mr. Vigil had no other source of medical care.

95. Defendants had a special relationship with Mr. Vigil which gave them extraordinary, unilateral authority over the provision of necessary and proper medical.

96. Defendants' conduct was extreme and outrageous undertaken with the intent to cause Mr. Vigil severe emotional distress.

97. Mr. Vigil suffered severe emotional distress.

98. The conduct of NMCD and Wexford and their respective employees, staff and agents was the cause of Mr. Vigil severe emotional distress, entitling him to compensatory and punitive damages.

COUNT IV: MEDICAL MALPRACTICE AND NEGLIGENT PROVISION OF HEALTHCARE SERVICES (AGAINST DEFENDANT WEXFORD)

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

100. At all relevant times, Wexford and its employees, agents, and staff, and the Doe Medical Providers were each healthcare providers providing health services to Mr. Vigil and other NMCD prisoners.

101. In undertaking the diagnosis, care, and treatment of Mr. Vigil, Wexford and its employees, agents, and staff, and the Doe Medical Providers had a duty to possess and apply the knowledge, skill, and care that was ordinarily used by reasonably well-operated medical facilities and well-qualified healthcare providers under similar circumstances, giving due consideration to the locality involved.

102. Wexford and its employees, agents, and staff, and the Doe Medical Providers breached their duties and were negligent in the management of Mr. Vigil's health and well-being.

103. The negligence, errors, and other acts and omissions of Wexford and its agents include, but are not limited to:

- a) Failing to provide adequate staff and adequately trained staff at the GCCF and CNMCF to care for inmates such as Mr. Vigil, with the full knowledge that such inadequate staffing practices would place inmates such as Mr. Vigil at risk of injury;
- b) Negligently hiring, retaining, training, and supervising staff, with the full knowledge that such negligent staffing practices would place inmates such as Mr. Vigil at risk of injury;
- c) Failing to provide proper prevention planning for emergent and worsening infection, infection prevention, and infection-prevention training such that Mr. Vigil's condition was permitted to worsen causing severe pain and permanent disability;
- d) Failing to provide and implement proper care plans that would adequately meet Mr. Vigil's needs, including the risks of severe infection in a population with known IV drug use;
- e) Failing to timely assess, diagnose, and treat Mr. Vigil's medical condition;
- f) Failing to provide a safe environment;
- g) Failing to have adequate and effective policies, procedures, staff, and equipment to adequately assess, diagnose, monitor, treat and manage Mr. Vigil's medical condition; and
- h) Failing to recognize Mr. Vigil's emergent need for a higher level of care that could not be provided at NMCD.

104. These Defendants breached their duties and were, at minimum, negligent in the evaluation, diagnosis, treatment and management of Mr. Vigil's health and safety.

105. These acts and failures to act by the Wexford Defendants and its employees, agents, apparent agents and contractors were at minimum, negligent, and upon information and belief, willful, wanton and in reckless disregard for the safety and well-being of Mr. Vigil.

106. At all relevant times, Wexford and its employees, agents, and staff, and the Doe Medical Providers were employees and entities acting within the scope of their duties, as permitted by law, to provide healthcare services to NMCD prisoners. The acts and omissions complained of herein were undertaken by Defendant Wexford within the scope of those Defendants' employment, contract, agency and/or apparent agency.

107. All acts complained of herein were authorized, participated in, or ratified by NMCD and Wexford, or their administrators, managers, officers or directors or shareholders.

108. As a result of the acts or omissions of the Wexford Defendants, Mr. Vigil suffered serious and permanent personal injuries, permanent disability, emotional and physical pain and suffering, morbidity, loss of enjoyment of life, future medical expenses and future rehabilitation expenses entitling him to an award of compensatory and punitive damages.

109. To the extent any Wexford Defendant claims coverage under the New Mexico Tort Claims Act, Immunity is waived for any "public employee" under NMSA § 41-4-10, as the Wexford Defendants were each directly charged with making clinical decisions and providing health care services related to the curing or prevention of impairments to the body.

**COUNT V: NEGLIGENCE TRAINING, STAFFING, AND SUPERVISION UNDER
NEW MEXICO COMMON LAW (AGAINST DEFENDANT WEXFORD)**

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

111. At all times relevant to this Complaint, Defendant Wexford was responsible for training, staffing, and supervising personnel, including personnel responsible for the medical-access gatekeeping and/or medical wellbeing of the GCCF and CNMCF prisoner patients. These personnel were employed or contracted by Wexford.

112. Upon information and belief, Defendant Wexford was responsible for supervising Wexford personnel in the actual day-to-day operation and maintenance of the GCCF and CNMCF.

113. Defendant Wexford failed to ensure that the GCCF and CNMCF was adequately staffed with medical personnel sufficiently trained to render aid to prisoners with ongoing and emergent medical conditions. Upon information and belief, Defendant Wexford also failed to follow through with or otherwise enforce NMCD's policies, procedures, and related contract provisions regarding prisoners with medical issues, which they were responsible for overseeing.

114. Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of prisoners with obvious signs of infection and/or increased risk of infection due to known IV drug use.

115. Given NMCD's history of inmates who have suffered from severe infection, particularly in prisoners with heightened risk of severe infection, Wexford and their respective employees, staff and agents knew of the heightened risk of severe infection to its inmates including Mr. Vigil.

116. Upon information and belief, Defendant Wexford and their supervisory agents failed to properly screen, supervise, educate and train its employees, contractors, and agents regarding how to appropriately and adequately identify, assess, treat, and manage, Mr. Vigil's medical condition.

117. Defendant Wexford failed to properly screen, supervise, educate and train its

employees, contractors, and agents in the symptoms, diagnosis, treatment, referral or intervention for medical conditions of inmates and specifically the medical condition of Mr. Vigil.

118. These failures along with Defendant's refusal to implement safety protocols to protect inmates such as Mr. Vigil created dangerous conditions arising from the operation of the GCCF and CNMCF.

119. Defendant Wexford, in the exercise of reasonable care, should have been aware of the risks of severe infection to inmates such as Mr. Vigil and should have protected against injuries caused by undiagnosed and untreated infection by controlling the conduct of the Wexford personnel over which they had supervisory authority, including the Doe Medical Providers.

120. Defendant Wexford failed to use ordinary care in their training, staffing, and supervising practices and had knowledge that the practices regarding training, staffing, and supervising Wexford personnel created an unreasonable risk of injury to Mr. Vigil and similarly situated NMCD prisoners.

121. These dangerous conditions were severe and foreseeable, so the Defendant Wexford had a heightened duty of care to oversee, discover, and prevent dangerous responses to the ongoing management of prisoner medical care and medical emergencies.

122. Defendant Wexford violated their duties of care and failed to provide services necessary to safely operate a public prison facility and medical facility.

123. The above Defendant's negligent training, staffing, and supervision were the cause of Mr. Vigil's injuries and damages.

**COUNT VI: BREACH OF CONTRACT, THIRD-PARTY BENEFICIARY
(AGAINST DEFENDANTS NMCD AND WEXFORD)**

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

125. As an NMCD prisoner in the custody of NMCD, Mr. Vigil was an intended

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. Vigil adequate medical care.

126. 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.

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

128. 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.

129. As an intended beneficiary to the contract for medical services between NMCD and Wexford, Mr. Vigil has standing to enforce the terms of the contract.

130. During the timeframe relevant to this Complaint, NMCD, Wexford and their employees and agents materially breached multiple provisions of PSC, and these violations were a cause of Mr. Vigil's injuries.

131. NMCD and Wexford are liable for damages caused by their employees and other agents for these failures and breaches.

132. As a result of breach of contract, Mr. Vigil suffered injuries and damages, including

consequential damages.

**COUNT VII: VIOLATION OF INHERENT AND INALIENABLE RIGHT
TO LIFE AND SAFETY OF ARTICLE II, § 4 OF THE NEW MEXICO
CONSTITUTION (DEFENDANTS NMCD AND WEXFORD)**

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

134. The New Mexico Constitution decrees that the government may deprive no person of life “without due process of law.” N.M. Const. art. II, § 18. Moreover, the New Mexico Constitution guarantees that the enjoyment of “life and liberty” is a “natural, inherent and inalienable” right. N.M. Const. art. II, § 4.

135. The New Mexico Courts view Article II, § 4 as a prism through which we view due process and equal protection guarantees. Article II, § 4 is a central component of our due process analysis.

136. Article II, § 4 under the New Mexico Constitution provides more expansive guarantees of life and safety than those under the United States Constitution.

137. The facts set forth herein establish a violation of Mr. Vigil’s inherent inalienable rights to life and safety.

138. The entire Complaint and all Counts set forth below should be viewed through this prism.

**COUNT VIII: DENIAL OF MEDICAL CARE IN VIOLATION OF
ARTICLE II, §§ 13 AND 18 OF THE NEW MEXICO CONSTITUTION
(AGAINST DEFENDANTS NMCD AND WEXFORD)**

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

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

141. Despite that knowledge, Defendants failed to provide Mr. Vigil with proper and

timely medical care, access to medical care, and/or failed to intervene in order to obtain timely and necessary medical care for Mr. Vigil in violation of Article II, § 13 of the New Mexico Constitution.

142. Prior to the events giving rise to Plaintiff's Complaint, Defendants NMCD and Wexford were on notice of the standard practice of denial of necessary and proper medical care to inmates.

143. Defendants NMCD, Wexford, and their respective supervisory personnel maintained and ratified the unconstitutional practices noted above directly resulting in the violation of Mr. Vigil's right to constitutionally adequate medical care.

144. Defendants NMCD, Wexford, and their respective employees, staff and agents colluded and conspired to deny Mr. Vigil of his right to constitutionally adequate medical care.

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

146. Defendants' unconstitutional actions and inactions were the cause of Mr. Vigil's injuries entitling him to compensatory and punitive damages, emotional and physical pain and suffering, loss of enjoyment of life, past and future medical expenses, and future rehabilitation expenses.

COUNT IX: POLICY AND PRACTICE OF DENIAL OF MEDICAL CARE VIOLATION OF ARTICLE II, §§ 13, 18 OF THE NEW MEXICO CONSTITUTION (AGAINST DEFENDANTS NMCD AND WEXFORD)

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

148. The actions and inactions of Defendants NMCD, Wexford and their respective employees, staff and agents constitute long-standing unconstitutional policies and practices of

NMCD and Wexford. The policies and practices amount to standard operating procedures for both NMCD and Wexford.

149. Under NMSA 1978, § 41-4A-3(C), 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 NMCD.

150. Wexford's practices set forth above were adopted by and are imputed to NMCD. NMCD colluded with, encouraged, ratified and/or actively conspired in Wexford's widespread practices.

151. NMCD and Wexford are liable for their own practices as well as the well-documented practices of Wexford. Both NMCD and Wexford were on notice and had knowledge of the unconstitutional practices of the other and colluded and conspired with each other in the application of those practices to deny NMCD inmates, including Mr. Vigil, the right to constitutionally adequate medical care.

152. Both NMCD and Wexford were acting under the color of law resulting in cruel and unusual punishment against Mr. Vigil.

153. Mr. Vigil's injuries were caused by NMCD and Wexford's practices of routine denial of medical care to NMCD inmates.

**COUNT X: VIOLATION OF DUE PROCESS OF ARTICLE II, § 18 OF
THE NEW MEXICO CONSTITUTION (AGAINST DEFENDANTS
NMCD AND WEXFORD)**

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

155. Mr. Vigil 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.

156. Defendants' actions and inactions (described in detail above) were intentional, conscience-shocking, wanton, arbitrary and capricious, and in gross and reckless disregard of, and deliberately indifferent to Mr. Vigil's constitutional rights.

157. 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. Vigil to terrifying, degrading, and life-threatening circumstances – over time and after deliberation.

158. Such treatment approximates torture, and its severity implicates Mr. Vigil's substantive due process rights under the New Mexico Constitution. These government actors were abusing their power to the highest degree and wielding it as an instrument of oppression in violation of Mr. Vigil's substantive due process rights.

**COUNT XI: CIVIL CONSPIRACY TO DENY MEDICAL CARE IN
VIOLATION OF ARTICLE II, § 13 OF THE NEW MEXICO
CONSTITUTION (AGAINST DEFENDANTS NMCD AND WEXFORD)**

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

160. The facts alleged above establish a conspiracy on the part of NMCD, Wexford, and their respective employees, staff, and agents to deny Mr. Vigil necessary, timely, proper, and constitutionally adequate medical care.

161. These Defendants engaged in a collective, concerted action to prevent Mr. Vigil from receiving the necessary and proper medical care with each actively obstructing medical care, acquiescing to the denial of medical care and failing to intervene to obtain medical care despite their duties to provide it.

162. As a result of the conspiracy, Mr. Vigil suffered injuries entitling him to compensatory and punitive damages, emotional and physical pain and suffering, loss of enjoyment of life, past and future medical expense, and future rehabilitation expense.

JURY DEMAND

163. 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 “the maximum recovery limit” outlined in NMSA 1978, § 41-4A-6;

B. 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. Vigil under the New Mexico Tort Claims Act, and New Mexico tort, contract, and common law, including compensation for the intentional infliction of emotional distress;

C. Punitive damages in an undetermined amount against Defendant Wexford;

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

E. Reasonable attorneys’ fees; and

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

Respectfully Submitted:

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