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13th JUDICIAL DISTRICT COURT
Valencia County
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PHILLIP ROMERO
CLERK OF THE COURT

STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT

EUGENIO S. MATHIS AS PERSONAL
REPRESENTATIVE OF THE WRONGFUL
DEATH ESTATE OF LANCE HESSELGREN,

Plaintiffs,

v.

No. D-1314-CV-2023-00306

Sanchez, James Lawrence

BOARD OF COUNTY COMMISSIONERS OF
VALENCIA COUNTY; a/k/a VALENCIA COUNTY
DETENTION CENTER; RANDY GUTIERREZ;
ROADRUNNER HEALTH SERVICES, LLC;
and JOHN DOES 1-10 in their individual and official
capacities, (employees, staff, agents of Valencia
County Detention Center and Roadrunner Health
Services, LLC).

Defendants.

**COMPLAINT FOR
MEDICAL MALPRACTICE AND RELATED CLAIMS**

COMES NOW the Plaintiff, Eugenio S. Mathis, as personal representative of the Wrongful Death Estate of Lance Hesselgren, by and through his attorneys GUEBERT GENTILE & PIAZZA, P.C. (Elizabeth M. Piazza) and COLLINS & COLLINS, P.C. (Parrish Collins), and for his cause of action states as follows:

JURISDICTION AND VENUE

1. All the material acts and / or omission complained of herein occurred in Valencia County, New Mexico.

2. A notice of Tort Claims was sent on January 7, 2022 to the Valencia County Clerk's Office, Valencia County Sheriff's Office, and the Valencia County Detention Center, meeting the notice requirements under both the New Mexico Tort Claims Act, NMSA 1978, § 41-4-16 and the

New Mexico Civil Rights Act, NMSA 1978, § 41-4A-13.

3. Jurisdiction and venue are proper over Defendants.

JURY DEMAND

4. Plaintiffs respectfully request a 12-person jury on all issues raised in this Complaint.

PARTIES

5. Lance Hesselgren died on October 9, 2022, in Bernalillo County, New Mexico.

6. Eugenio S. Mathis has been appointed as the Personal Representative of Mr. Hesselgren's wrongful death estate.

7. Mr. Mathis is a resident of Santa Fe, New Mexico.

8. At all relevant times and at the time of his death, Mr. Hesselgren was an inmate in the care and custody of Defendant Valencia County Detention Center ("VCDC").

9. The County is a "public body" as defined under the New Mexico Civil Rights Act and is an appropriate entity that can be sued under the New Mexico Civil Rights Act. *See* NMSA 1978, § 41-4A-2. The County is a "governmental entity" under the New Mexico Tort Claims Act. *See* NMSA 1978, 41-4-3(C). At all times material hereto, VCDC was owned, operated, supervised, directed, and controlled by Defendant Board of County Commissioners of Valencia County ("the County").

10. Pursuant to NMSA 1978, § 4-44-19, 33-3-3 through 33-3-8, and 33-3-33, the County was mandated by statute to maintain and operate a facility for the safe incarceration and healthcare of inmates under its jurisdiction. The County is required to administer, manage, and supervise the health care provided to inmates at VCDC.

11. Upon information and belief, Defendant Randy Gutierrez is a resident of the County

of Valencia, and at all relevant times was employed by Valencia County as the warden of VCDC. At all relevant times, Defendant Gutierrez supervised the operation and daily management of VCDC and was responsible for the implementation of and adherence to all the policies, practices, and customs of the VCDC. Defendant Gutierrez is named in his individual and official capacities.

12. Defendant Roadrunner Health Services, LLC (“Roadrunner”) is a domestic limited liability company organized under the laws of the State of New Mexico. Its principal place of business is 7015 Santa Rachel Street NE, Albuquerque, NM 87113. It can be served at the office of its registered agent, Law 4 Small Business, P.C., 320 Gold Ave. SW, Ste. 620, Albuquerque, NM 87102.

13. By the terms of an agreement between Roadrunner and VCDC, Roadrunner was contracted by VCDC for the purposes of providing medical care to inmates in the VCDC prison system, including Mr. Hesselgren. Pursuant to the contract, VCDC adopted Roadrunner’s policies, practices, habits, customs, procedures, training, and supervision on its own.

14. At all times material hereto, Defendant Roadrunner acted through its owners, officers, directors, employees, agents or apparent agents, including but not limited to, administrators, management, nurses, doctors, technicians, and other medical personnel and staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency, and / or apparent agency.

15. At all times material hereto, Defendant Roadrunner’s agents and employees were independent contractors performing professional services for the County and were not employees of the County of Valencia.

16. Nevertheless, at all times material hereto, Roadrunner and its agents and employees were acting as the apparent agents of VCDC.

17. This Court has jurisdiction over this cause of action, and venue in Valencia County, New Mexico is appropriate.

FACTUAL BACKGROUND

18. At times relevant to this complaint, Mr. Hesselgren was a 65-year-old man with a past medical history of hypertension, Type II diabetes, obesity, neuropathy, and hypothyroidism, among other conditions.

19. On August 25, 2021, Mr. Hesselgren was booked into the Metropolitan Detention Center pursuant to an arrest warrant.

20. On August 26, 2021, Mr. Hesselgren reported to an MDC nurse that he had a cut on his third toe that was actively bleeding.

21. The cut on Mr. Hesselgren's toe was cleaned and covered with a band-aid. He was also given a walker and Oxygen concentrator.

22. Mr. Hesselgren also reported taking regular Valsartan, a medication used to treat high blood pressure and heart failure. While Valsartan was ordered, it was not given to Mr. Hesselgren as administration required additional approval.

23. It does not appear from Mr. Hesselgren's medical records that he was provided Valsartan or any other high blood pressure medication while at MDC.

24. On August 27, 2021, Mr. Hesselgren was transferred to Valencia County Detention Center in Los Lunas, New Mexico.

25. Prior to his transfer, MDC providers noted in Mr. Hesselgren's transfer screening that he needed blood sugar checks twice a day and blood pressure checks three times a week.

26. On August 27, 2021, Mr. Hesselgren informed Defendant Roadrunner, via an intake with medical staff member Shaneice Williams, that he could not walk without falling over and

required a wheelchair due to severe pain associated with diabetic neuropathy.

27. On August 29 and August 30, 2021, Defendant Roadrunner, by and through its agents/employees, received medical services forms with illegible signatures supposedly belonging to Mr. Hesselgren.

28. The signature on the August 29, 2021, form is illegible, shaky, and uneven.

29. The signature on the August 30, 2021, form consists of three vertical lines.

30. Defendants Roadrunner, its staff members, agents, and employees knew or should have known that Mr. Hesselgren needed immediate medical care and that he was not able to think clearly and make decisions regarding his care, or sign a refusal form.

31. The purported signatures on the refusal form are so illegible that either the forms were not actually signed by Mr. Hesselgren, or it was obvious that Mr. Hesselgren was experiencing a medical emergency.

32. The differences in the purported signatures along with Mr. Hesselgren's deteriorating condition demonstrate he was experiencing a medical emergency that required immediate medical care.

33. On August 31, 2021, Defendant Roadrunner, by and through its agent/employee Nurse Cheryl Baca, noted that Mr. Hesselgren "has fallen twice in the last 2 days, he is unable to stand or walk on his own, patient is unable to care for himself. This morning when the officer found the patient, he was laying on the floor, both feet were bleeding ...[and] the right foot 3rd digit the nail was torn off during this incident. He has wounds ...on his toes [and] the second digit on the left foot is turning black ... [T]he patient has not been eating his trays. Also, the patient's O2 level is low ... [and] he is very pale in color. The patient unable to make it to medical for his diabetic checks at this time. I cleaned and bandaged both feet, place the patient on a boat on the

floor to avoid any other injuries to himself.”

34. The same day, Defendant Roadrunner, by and through its agent/employee Cheryl Baca, emailed Roadrunners’ medical provider, Leona Herrell, and informed her of Mr. Hesselgren’s fall and status.

35. Defendant Roadrunner, by and through its agent/employee Leona Herrell, directed Cheryl Baca to “advise the warden for request for higher level of care,” and to schedule for next provider clinic.

36. Defendant Roadrunner, by and through its agent/employee Cheryl Baca, then informed Leona Herrell that Mr. Hesselgren was not able to walk on his own and he could not pick himself up to get into his wheelchair.

37. Defendant Roadrunner, by and through its agent/employee Cheryl Baca also stated that Mr. Hesselgren was shaking so severely that he could not hold a glass of water and likely could not feed himself.

38. In response, Defendant Roadrunner, by and through its agent/employee Leona Herrell, only directed Nurse Baca to clean the wounds on Mr. Hesselgren’s feet.

39. Despite the severity of Mr. Hesselgren’s condition and deteriorating state and despite the recognition that he needed a higher level of care, Mr. Hesselgren was not referred for a higher level of care or Defendant Gutierrez denied the request for a higher level of care on August 31, 2021.

40. Alarming, neither Defendant Roadrunner, by and through its agents and employees, nor, upon information and belief, the Defendant County, by and through its agents and employees, and Defendant Gutierrez, ever followed through regarding Nurse Baca’s concern for Mr. Hesselgren’s deteriorating condition.

41. The County by and through its agents and employees, and Defendant Gutierrez, had a statutory and constitutional responsibility to ensure that adequate measures were taken to protect Mr. Hesselgren's health and safety.

42. Defendant Roadrunner, in acting as a public body via its contract with the County, adopted this responsibility.

43. It was incumbent upon both County by and through its agents and employees, Defendant Gutierrez, and Roadrunner Defendants to ensure that Mr. Hesselgren could be safely housed at the facility.

44. All Defendants had a statutory and a constitutional burden to determine the cause of Mr. Hesselgren's condition and intervene in the face of a serious medical need.

45. Despite this burden and knowing that Mr. Hesselgren was shaking so badly he could not hold a glass of water, could not walk, could not eat, could not get himself into a wheelchair, and had fallen on August 30, 2021, and August 31, 2021, all Defendants failed to intervene.

46. On September 1, 2021, Defendant County, by and through its agent/employee Major Geovanie Nunez, found Mr. Hesselgren laying on the floor in the same spot he had been placed the day before with pale skin and lips.

47. Finally, Mr. Hesselgren was taken to the University of New Mexico Hospital ("UNMH").

48. At UNMH, Mr. Hesselgren stated he was unable to eat his last seven meals.

49. UNMH also noted that Mr. Hesselgren's arms, hands, and face had tremors and he was unable to walk.

50. Mr. Hesselgren had edema in both lower legs, pressure ulcers on his left calf, and

redness on his left foot and leg.

51. Mr. Hesselgren's 3rd left toe was necrotic.

52. Mr. Hesselgren's right fourth toe was black, dry, and gangrenous.

53. All other toes were bloody at each tip.

54. UNMH assessed Mr. Hesselgren with numerous conditions, including sepsis, severe cellulitis of the lower left extremity, left toe gangrene, lactic acidosis, and cardiac ischemia.

55. All Defendants knew or should have known of the risks of sepsis given Mr. Hesselgren's known history of diabetes, high blood pressure, neuropathy, and other medical complications, all of which have significant and possibly fatal complications.

56. All Defendants failed to provide appropriate wound care, medical evaluation, and medical care.

57. All Defendants failed to provide care to Mr. Hesselgren that would have prevented his eventual death from what was, upon information and belief, a preventable infection.

58. Defendant Roadrunner, by and through its agents/employees, failed to refer Mr. Hesselgren for a higher level of care on August 31, 2021.

59. In the alternative, Defendant County, by and through its agent, the VCDC Warden Defendant Gutierrez, failed to approve a higher level of care for Mr. Hesselgren.

60. Upon information and belief, had Defendant Roadrunner performed appropriate wound assessment and wound care, the onset of severe cellulitis, sepsis, and subsequent complications, including death, could have been avoided.

61. Mr. Hesselgren died on October 9, 2022, at UNMH from sepsis necrotizing fasciitis of his left leg.

62. Upon information and belief, the preceding conduct arose out of widespread

practices, patterns, and customs at VCDC which were directed, supervised, and/or ratified by both County and Roadrunner Defendants.

63. Had any or all Defendants appropriately monitored and treated Mr. Hesselgren for his rapidly declining health, his death could have been avoided.

64. However, because all Defendants and their agents and employees ignored Mr. Hesselgren's condition and failed to get him the medical help that he needed, he unnecessarily lost his life.

65. In addition, the policies, patterns, practices, and customs set forth throughout this Complaint were the moving forces behind the preceding misconduct.

66. All Defendants are liable for Plaintiffs' injuries and damages.

COUNT I: WRONGFUL DEATH

67. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

68. As set forth above, all Defendants failed to appropriately monitor and treat Mr. Hesselgren, failed to ensure that he received appropriate treatment for infection and other complications related to his preexisting health conditions, and otherwise failed to act appropriately under the circumstances.

69. Mr. Hesselgren died as a result of the wrongful conduct of all Defendants.

70. Mr. Hesselgren's estate is entitled to recover damages from all Defendants under the New Mexico Wrongful Death Act in an amount to be determined at trial.

COUNT II: VIOLATION OF THE RIGHT TO LIFE OF ARTICLE II, § 4 OF THE NEW MEXICO STATE CONSTITUTION (All Defendants)

71. Plaintiffs incorporate by reference as if fully set forth herein, each and every

allegation contained in the paragraphs above.

72. The New Mexico Constitution states that the enjoyment of “life and liberty” and the pursuit of safety and happiness are “natural, inherent and inalienable” rights. N.M. Const. Art. II, § 4.

73. In this case, as set forth above, all Defendants, and their agents, employees, and apparent agents violated Mr. Hesselgren’s right to life and safety as set forth in the New Mexico Constitution. Through their acts and omissions, they violated Mr. Hesselgren’s constitutional rights.

74. Mr. Hesselgren suffered serious physical injuries and needlessly lost his life as a result of the wrongful conduct of these Defendants.

75. These Defendants are liable to Plaintiffs under the New Mexico Civil Rights Act.

76. There, Plaintiffs are entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT III: VIOLATION OF THE RIGHT TO DUE PROCESS OF ARTICLE II, § 18
OF THE NEW MEXICO STATE CONSTITUTION
(All Defendants)**

77. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

78. The New Mexico Constitution states that the government may not deprive any person of life “without due process of law.”

79. In this case, as set forth above, both County and Roadrunner Defendants, and their agents, employees, and apparent agents, violated Mr. Hesselgren’s right to due process before he was deprived of his life as set forth in the New Mexico Constitution. Through their acts and omissions, they violated Mr. Hesselgren’s constitutional rights.

80. As set forth above, County Defendants, and their agents, employees, and apparent agents were aware that Mr. Hesselgren had signs and symptoms of a serious medical condition, including but not limited to, signs and symptoms of diabetic shock and sepsis, necrosis, abnormal behavior, abnormal vital signs, and signs of confusion and physical deterioration.

81. Despite such knowledge, these Defendants failed to provide Mr. Hesselgren with proper medical health care, failed to provide access to medical health care, failed to intervene in order to obtain necessary medical health care for Mr. Hesselgren, and otherwise failed to take reasonable measures to protect Mr. Hesselgren's health and safety.

82. These failures resulted not only from the individual acts of these Defendants, but also through the policies, practices, and customs of these Defendants set forth above to deny necessary medical care to inmates. Such policies and practices were ratified and adopted by all Defendants, by and through their agents/employees, and were the moving force behind the deprivation of Mr. Hesselgren's rights.

83. These Defendants are liable to Plaintiffs under the New Mexico Civil Rights Act.

84. There, Plaintiffs are entitled to all damages allowed under the New Mexico Civil Rights Act

**COUNT IV: DENIAL OF MEDICAL CARE IN VIOLATION OF ARTICLE II, §§ 13
AND 18 OF THE NEW MEXICO STATE CONSTITUTION
(All Defendants)**

85. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

86. As set forth above, County Defendants, and their agents, employees, and apparent agents, were aware that Mr. Hesselgren had signs and symptoms of a serious medical condition, including but not limited to, signs and symptoms of diabetic shock and sepsis, necrosis, abnormal

behavior, abnormal vital signs, and signs of confusion and physical deterioration.

87. Despite such knowledge, these Defendants failed to provide Mr. Hesselgren with proper medical health care, failed to provide access to medical health care, failed to intervene in order to obtain necessary medical health care for Mr. Hesselgren, and otherwise failed to take reasonable measures to protect Mr. Hesselgren's health and safety in violation of Article II, § 13 of the New Mexico Constitution.

88. These failures resulted not only from the individual acts of these Defendants, but also through the policies, practices, and customs of these Defendants set forth above to deny necessary medical care to inmates. Such policies and practices were ratified and adopted by all Defendants, by and through their agents/employees, and were the moving force behind the deprivation of Mr. Hesselgren's rights.

89. The acts and omissions of these Defendants violated Mr. Hesselgren's rights under the New Mexico Constitution.

90. The acts and omissions of these Defendants were a cause of Mr. Hesselgren's wrongful death, and Defendants are liable for Plaintiffs' injuries and damages under the New Mexico Civil Rights Act.

91. Plaintiffs are entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT V: POLICY AND PRACTICE OF DENIAL OF MEDICAL CARE IN
VIOLATION OF ARTICLE II, §§ 13 AND 18 OF THE NEW MEXICO STATE
CONSTITUTION
(All Defendants)**

92. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

93. As set forth above, during the times pertinent to the complaint, Mr. Hesselgren was

deprived of his constitutional rights under the New Mexico Constitution.

94. The moving force behind this deprivation were policies, practices, customs, and patterns adopted and ratified by the County Defendants.

95. Such policies, practices, customs, and patterns included:

- a. Failing to report, diagnose, and properly examine and treat inmates with serious medical conditions,
- b. Failing to respond to inmates who exhibited clear signs of serious medical conditions,
- c. Failing to appropriately screen inmates for signs and symptoms of diabetic shock and infection,
- d. Failing to report signs and symptoms of serious medical condition to medical providers,
- e. Failing to initiate monitoring protocols for inmates with serious medical conditions and needs,
- f. Delaying or denying patient referrals to necessary emergency or other offsite medical services;
- g. Understaffing the medical unit;
- h. Failing to provide adequate medical documentation or to communicate significant information about a patient's condition to medical providers on staff;
- i. Failing to adequately hire, retain, train, and supervise VCDC employees and agents on procedures necessary to protect a patient's health;
- j. Failing to reprimand, retrain, or take corrective action against VCDC or

Roadrunner medical providers engaging in unconstitutional denial of medical care to inmates, and instead ratifying such conduct; and

- k. Failing to report, diagnose, properly examine, monitor, and treat warning signs of serious medical conditions, and instead, to delay and deny patients' access to critical medical services.

96. These policies, practices, customs, and patterns caused a violation of Mr. Hesselgren's constitutional rights under the New Mexico Constitution.

97. Moreover, Defendants failed to intervene to protect Mr. Hesselgren's rights, which was a cause of Plaintiffs' injuries and damages under the New Mexico Civil Rights Act.

98. Plaintiffs are entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT VI: VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS
GUARANTEED IN ARTICLE II, § 18 OF THE NEW MEXICO STATE
CONSTITUTION
(All Defendants)**

99. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

100. Article II, Section 18 of the New Mexico State Constitution guarantees a fundamental right to be protected against the unlawful invasion of a person's personal safety and bodily integrity. Substantive due process rights include the rights to personal autonomy, bodily integrity, self-dignity, and self-determination.

101. In this case, as set forth above, Defendant County, and its agents, employees, and apparent agents, violated Mr. Hesselgren's substantive due process rights under the New Mexico Constitution.

102. Moreover, Defendants failed to intervene to protect Mr. Hesselgren's rights, which

was a cause of Plaintiffs' injuries and damages.

103. Plaintiffs are therefore entitled to all damages allowed under the New Mexico Civil Rights Act.

**COUNT VII: NEGLIGENT OPERATION OF A MEDICAL FACILITY, §41-4-9
(Defendant County and Defendant Gutierrez)**

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

105. Defendants County and Gutierrez are entrusted with the medical care of inmates who have no other source of medical care by contract with VCDC.

106. Defendant County, its employees, staff, and agents, and Defendant Gutierrez were unqualified to care for Mr. Hesselgren and yet refused to refer Plaintiff to specialists.

107. Defendant County is negligent in failing to properly assess, treat and manage Plaintiff's serious medical needs.

108. Defendant County, its employees, staff, and agents, and Defendant Gutierrez are negligent in failing to properly refer Plaintiff to a physician who could effectively treat Plaintiff.

109. By failing to either: (1) properly treat Plaintiff's medical conditions, or (2) properly refer Plaintiff to be seen by a physician who could effectively treat Plaintiff, Defendant County, its employees, staff and agents and Defendant Gutierrez breached their duty to medically treat Plaintiff in a reasonably prudent manner.

110. Defendant County, its employees, staff and agents and Defendant Gutierrez failed to properly address Plaintiff's medical condition, including but not limited to:

- a. Failure to evaluate, treat and manager Mr. Hesselgren's diabetes and other conditions;
- b. Failure to develop, employ, and follow appropriate policies and procedures

with regard to the assessment, treatment, and management of Mr. Hesselgren's conditions;

- c. Failure to create an appropriate treatment plan;
- d. Failure to implement an appropriate treatment plan;
- e. Failure to take the reasonable steps to acquire proper treatment for Mr. Hesselgren;
- f. Failure to refer Mr. Hesselgren to appropriate specialists;
- g. Failure to timely transfer Mr. Hesselgren to an appropriate treatment facility;
- h. Failure to protect and preserve the health of Mr. Hesselgren;

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

112. Such conduct amounts to negligence in the treatment of Plaintiff.

113. Defendant County, its employees, staff, and agents, and Defendant Gutierrez had a duty to properly screen, supervise, educate, and train its employees regarding infection control within the facility.

114. Defendant County, its employees, staff, and agents, and Defendant Gutierrez had a duty to properly screen, supervise, educate, and train its employees regarding the proper treatment of spinal infection patients.

115. On information and belief, Defendant County, its employees, staff and agents and Defendant Gutierrez failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat, and manage Plaintiff's multiple medical conditions, including the emergent abscess.

116. As a result of the foregoing, Plaintiff has suffered damages and injuries including,

but not limited to, physical injuries, pain and suffering, and death.

117. The actions of Defendant County, its employees, staff and agents and Defendant Gutierrez were negligent, willful, wanton, and in gross and reckless disregard for Plaintiff's well-being entitling Plaintiff to punitive damages thereon.

**COUNT VIII: NEGLIGENT PROVISION OF MEDICAL CARE UNDER THE NEW
MEXICO TORT CLAIMS ACT, §41-4-10 NMSA
(Defendant County and Defendant Gutierrez)**

118. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

119. At all times material hereto, Defendant County, and its employees, agents, and apparent agents, 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.

120. Defendant County, and its employees, agents, and apparent agents, were ultimately responsible for the medical care provided to the inmates at VCDC.

121. Defendant County, and its employees, agents, and apparent agents, were required to operate the facility in a manner that ensured that inmates at VCDC received timely and appropriate medical care. At all times, Defendant County was 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.

122. Here, this Defendant breached its duty to Mr. Hesselgren by failing to provide him with timely and appropriate medical care for his serious medical condition.

123. This resulted not only from the individual actions of the staff that interacted with Mr. Hesselgren but also from the negligence of public employees in operating the facility, including but not limited to:

- a. Negligent hiring, training, and supervision;
- b. Failure to develop, implement, and / or enforce appropriate policies and procedures;
- c. Failing to provide a safe environment for inmates, including Mr. Hesselgren;
- d. Understaffing; and
- e. Other acts to be revealed in discovery.

124. As a result of these failures, these Defendants are liable to Plaintiffs under the New Mexico Tort Claims Act.

**COUNT IX: MEDICAL MALPRACTICE AND NEGLIGENCE
(Defendant Roadrunner)**

125. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

126. At all times material hereto, Defendant Roadrunner, and its employees, agents, and apparent agents, 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.

127. Here, as set forth above, Defendant Roadrunner, and its employees, agents, and apparent agents, acted unreasonably and deprived Mr. Hesselgren of rights secured by the New Mexico Constitution, including but not limited to the right to life and safety.

128. These violations resulted not only from the individual acts of Defendant Roadrunner, and its employees, agents, and apparent agents, in failing to ensure that Mr. Hesselgren received treatment for a serious medical condition, but also through the policies, practices, and customs of these Defendants set forth above to deny necessary medical care to inmates. Such policies and practices were ratified and adopted by the supervisory personnel of Defendants County and Gutierrez and Defendant Roadrunner and were the moving force behind the deprivation of Mr. Hesselgren's rights.

129. Defendant Roadrunner, individually and by and through its agents, employees, and apparent agents, owed duties to Mr. Hesselgren to possess and apply the knowledge and to use the skill and care ordinary used by reasonably well qualified healthcare providers practicing under similar circumstances, giving due consideration to the locality involved.

130. Defendant Roadrunner, individually and by and through its agents, employees, and apparent agents, were also under the duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

131. Defendant Roadrunner, either directly or through its employees, agents, and apparent agents, breached the duties they owed to Mr. Hesselgren in at least the following ways:

- a. Failing to review his medical file;
- b. Failing to appreciate the significance of his condition and report to a higher level of care or transfer to a higher level of care;
- c. Failing to appropriately assess and monitor his condition;
- d. Failing to physically examine him and evaluate his vital signs;
- e. Failing to identify him as needing a higher level of medical care and emergency medical care;
- f. Ignoring Mr. Hesselgren's signs and symptoms and conditions;
- g. Failing to provide coordinated care, including appropriate communication between providers and specialties;
- h. Failing to recognize the significance and severity of Mr. Hesselgren's condition and to intervene accordingly;
- i. Failing to perform an appropriate work up of Mr. Hesselgren's condition;
- j. Failing to have appropriate, reasonable, and safe policies, procedures, and protocols

in place;

- k. Failing to provide agents and employees with appropriate resources to provide safe and reasonable care;
- l. Negligent hiring, training, retention, and supervision;
- m. Otherwise failing to provide safe, reasonable, and appropriate medical care under the circumstances; and
- n. Other acts and omissions to be revealed in discovery.

132. These breaches were a cause of Mr. Hesselgren's death.

133. Defendant Roadrunner is liable for Plaintiffs' injuries and damages.

134. Moreover, the above-described acts, either individually or cumulatively, were done with reckless and wanton disregard for the health and safety of Mr. Hesselgren. Accordingly, Plaintiffs are entitled to an award of punitive damages against Roadrunner, and Roadrunner is vicariously liable for such conduct.

**COUNT X: NEGLIGENT TRAINING, STAFFING, AND SUPERVISION UNDER NEW MEXICO LAW
(Defendant Roadrunner)**

135. Plaintiffs incorporate by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

136. At all times material hereto, Defendant County and Defendant Gutierrez were responsible for training, staffing, and supervising the staff at VCDC.

137. At all times material hereto, Defendant Roadrunner was responsible for training, staffing, and supervising the medical staff at VCDC.

138. Defendants County, Gutierrez, and Roadrunner breached their duties in at least the following ways:

- a. Failing to ensure that VCDC was adequately staffed with medical and security personnel who were sufficiently trained to render aid to inmates with medical conditions;
- b. Failing to appropriately train medical and security personnel to identify inmates in need of medical aid;
- c. Failing to supervise medical and security personnel to ensure that they followed the policies and procedures in place at the facility.

139. Such failures directly resulted in the harm suffered by Mr. Hesselgren, whose death resulted from understaffing and/or the failure to train and supervise the staff assigned to his case. Defendants County, Gutierrez, and Roadrunner failed to put in place protections that would have prevented the incident giving rise to this case.

140. Defendants County, Gutierrez, and Roadrunner violated their duties of care, which resulted in an unsafe facility for the inmates of VCDC, including Mr. Hesselgren.

141. Immunity of waived for these claims under the Tort Claims Act, including §§ 41-4-6 and 41-4-9.

142. Defendants County, Gutierrez, and Roadrunner are liable for Plaintiffs' injuries and damages.

**COUNT XI: RESPONDEAT SUPERIOR AND AGENCY
(Defendant Roadrunner)**

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

144. Defendant Roadrunner is responsible to Plaintiff under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

145. Defendant Roadrunner is responsible to Plaintiff under the doctrine of agency for

the conduct of its employees, staff, and agents.

**COUNT XII: CIVIL CONSPIRACY
(Defendant Roadrunner)**

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

147. The facts set forth above illustrate a civil conspiracy on the part of Defendants collectively to commit medical negligence along with all related counts thereto.

148. As a result of said conspiracy, Mr. Hesselgren suffered severe physical and emotional distress as a result of the conduct of Defendants.

149. Plaintiff is entitled to recovery for the injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress, of Mr. Hesselgren.

150. Plaintiff is entitled to punitive damages against Defendant Roadrunner.

**COUNT XIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Defendant Roadrunner)**

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

152. Defendant Roadrunner intentionally denied Plaintiff proper and necessary medical care.

153. Defendant Roadrunner failed to take action to provide proper medical care.

154. The conduct of Defendant Roadrunner was extreme, outrageous, and intentional.

155. Mr. Hesselgren suffered severe emotional distress as a result of the conduct of Defendant Roadrunner.

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

COUNT XIII: PUNITIVE DAMAGES
(Defendant Roadrunner)

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. For all damages allowed under New Mexico law in an amount to be proven at trial, including all allowable damages under the New Mexico Civil Rights Act, New Mexico Wrongful Death Act, and the New Mexico Tort Claims Act;
- b. For punitive damages as allowed by law from Defendant Roadrunner;

- c. For pre- and post-judgment interest as allowed by law;
- d. Costs incurred by Plaintiffs;
- e. Attorneys' fees to the extent allowed under the law; and
- f. For such other and further relief to which the Plaintiffs are justly entitled.

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