

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT

Case assigned to Ellenwood, Kathleen McGarry

No.:                     D-101-CV-2023-00072                    

MICHAEL LOPEZ,

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**

COMES NOW Plaintiff, Michael Lopez (“Mr. Lopez” 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) for his cause of action states as follows:

**JURISDICTION AND VENUE**

1. All acts complained of herein occurred in Union County, Valencia County, and Lea County, New Mexico.
2. A Notice of Claims was sent on October 13, 2021, January 12, 2022, and January 28, 2022, pursuant to the New Mexico Tort Claims Act (NMSA § 41-4-16).
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; and New Mexico tort, contract, and common law.

### **PARTIES AND CULPABLE ACTORS**

5. Mr. Lopez was at all relevant times incarcerated at the Northeastern New Mexico Correctional Facility (“NENMCF”), Central New Mexico Correctional Facility (CNMCF”), and the Lea County Correctional Facility (“LCCF”), NMCD prison facilities located in Clayton, Union County, New Mexico, Los Lunas, Valencia County, New Mexico, and Hobbs, Lea County, New Mexico respectively. He remains in the custody of NMCD at LCCF as of the filing of this complaint.

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. Lopez.

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. Lopez. 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.

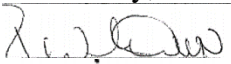

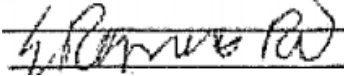
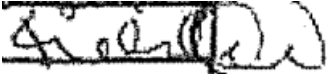
10. Defendant Hope Salazar was at all times relevant to this Complaint the Director of NMCD Office of Inspector General with responsibility to assure services contractually required by the State of New Mexico are met qualitatively and quantitatively. The Office of the Inspector General oversees Internal 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 NENMCF and LCCF facilities:

- a) NENMCF Health Services Administrator,
- b) LCCF Health Services Administrator,
- c) NENMCF Medical Director,
- d) LCCF Medical Director,

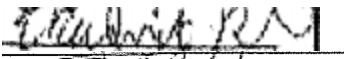
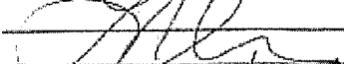
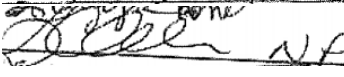
- e) Wexford Statewide Medical Director,
- f) Wexford Statewide Director of Nursing,
- g) Wexford Regional Medical Director,<sup>1</sup>
- h) Wexford Regional Manager,
- i) Wexford Regional Director of Nursing,
- j) Wexford Quality Improvement Coordinator,
- k) NENMCF Director of Nursing,
- l) LCCF Director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

12. The following Wexford medical providers, some of whom cannot be identified due to illegible signatures, failed to provide adequate medical care to Mr. Lopez through their failures to address requests for medical treatment, to evaluate and assess a scalp laceration, and to refer Mr. Lopez for an evaluation and drainage of his scalp wound causing a severe brain infection and extreme pain and suffering. Many of the signatures are illegible, a breach of NMCD policy, but are believed to belong to the following individuals:

- a. C. Brawley, LPN
- b. 
- c. L. Chisour NP.
- d. C. F. [illegible]
- e. 
- f. 
- g. 

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

- h. 
- i. 
- j. 

13. Doe Medical Providers are as of yet unidentified Wexford medical providers who shared responsibility for the medical care and treatment of Mr. Lopez.

14. Upon information and belief, the individuals identified in Paragraph 13 and unidentified Doe providers were the attending medical providers to Mr. Lopez.

15. At all times alleged herein, the identified medical providers and 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 care providers for Mr. Lopez 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. Lopez.

16. 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 NENMCF and LCCF, 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.

17. Doe Corrections Officers (“COs”) were the unit officers, pod officers and control officers assigned to Mr. Lopez’s cell or pod unit at times relevant to this Complaint. These Doe Corrections Officers were each responsible for the care, health, safety, and proper medical

treatment of Mr. Lopez while he was housed at the NENMCF. 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. Lopez. They are sued herein in their individual capacities.

## **FACTUAL BACKGROUND**

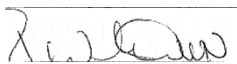
### **Medical Neglect at NMCD**

18. Mr. Lopez was 38 years old at the time the ongoing medical neglect began in January of 2021.

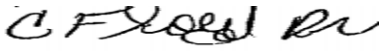
19. On January 16, 2021, Mr. Lopez submitted a health services request form stating that he had bumped his head on the TV stand. At that time, he reported an open wound on the top of his head, which was infected and leaking yellow pus. He also reported that it “hurt a lot.”

20. The proper assessment of an open scalp wound includes meticulous cleansing and closure of fresh wounds, timely referral to definitive drainage of infected wound, pus cultures and sensitivity, and the start of antibiotics for an infected wound.

21. Despite having an open wound that was leaking yellow pus, the Defendants took no action on Mr. Lopez’s request for medical care until February 16, 2021, a delay of approximately 30 days.

22. On February 16, 2021, the January 2021 health services request form was triaged by . Mr. Lopez was given Ibuprofen for pain as per a standing order, and his wound was cleaned, and a band aid applied. There was no detailed wound assessment conducted at that time.


23. On February 16, 2021, Mr. Lopez submitted a second health services request form seeking medical care. He reported that he “split the top of [his] head,” and that he had an open wound, leaking pus, and that it was “getting[g] infected.”

24. On February 18, 2021, Mr. Lopez was evaluated by  and he was noted to have a slight drainage in his band aid. The wound was cleaned, applied with triple antibiotic paste and a band aid. No further assessments or treatment was provided on February 18, 2021.

25. The Wexford medical personnel failed to appropriately assess Mr. Lopez’s wound for infection, order pus culture and sensitivity, refer and treat with drainage of the infected wound, and/or prescribe antibiotics on either February 16 or 18 of 2021.

26. Due to the delay in timely referral for wound drainage and timely initiation of antibiotics, Mr. Lopez’s condition worsened, and he presented with an infected scalp wound with fever and leukocytosis.

27. The presence of an infected scalp wound with fever and leukocytosis requires an appropriate wound assessment and timely referral to definitive drainage of the infected wound. Despite these significant medical findings, Mr. Lopez was not appropriated referred for necessary medical treatment.

28. Specifically, on February 21, 2021, Mr. Lopez was seen by . He had a temperature of 102.8, and on examination, he was noted to have beefy red flesh on his parietal scalp, appearing to be a stage II laceration on is head with serious drainage. His skin was warm to the touch, and he had an increased white blood cell count. While an infection was suspected, no referral was made for definitive drainage of an

infected wound or a higher level of care. Instead, a wound culture was ordered, and a five-day course of Bactrim (antibiotic) was prescribed.

29. On February 22, 2021, Mr. Lopez was seen by [Signature] with continued complaints of fever and chills. His temperature was 102.8, oxygen saturation was 95%, and his GCS score was 15. No referral was made for definitive drainage of an infected wound or a higher level of care.

30. Plaintiff's wound was cleaned on February 23, 2021, by [Signature] and on February 24, 2021, by [Signature].

31. On February 26, 2021, the culture from Mr. Lopez's head wound revealed the growth of 1+ Coagulase negative Staphylococcus.

32. On March 2, 2021, Mr. Lopez presented to Wexford medical provider [Signature] for nursing wound care. He complained of excessive drainage on standing. His head wound was noted to be with yellow slough, with hyper granulation tissue. He was recommended to cleanse the wound with normal saline and to take Ibuprofen as needed. No referral was made for definitive drainage of an infected wound or a higher level of care.

33. On March 3, 2021, Mr. Lopez was seen again by medical personnel. It was noted that he was acting strange and not following commands. He was diagnosed with acute altered mental status, but his presentation was shockingly attributed to suspected drug use. Mr. Lopez was placed in medical observation.

34. Mr. Lopez continued to have altered mental status, and later in the day on March 3, 2021, Mr. Lopez was suspected to have sepsis related to his head wound with a



differential diagnosis of altered mental status, fever, hypotension, and tachycardia. Orders were given for transport to the emergency room for evaluation and treatment.

35. Medical personnel chose to ignore and disregard significant medical findings, and in doing so, failed to refer Mr. Lopez for medically necessary treatment to include appropriate wound care, wound drainage, and treatment for infection. These 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. Lopez.

### **Emergency Treatment and Hospitalizations**

36. On March 3, 2021, Mr. Lopez was transported to Union County General Hospital. His lab work was abnormal and showed increased white blood cells 23.33, neutrophils percentage of 85.5, and c-reactive protein of 14.10. A gram stain of a specimen obtained from his head wound showed gram-positive cocci in singles and pairs.

37. Mr. Lopez was subsequently transferred to St. Vincent's Regional Medical Center on March 4, 2021, to treat encephalopathy. He continued to exhibit altered mental status, agitation and remained unresponsive.

38. Mr. Lopez was diagnosed with sepsis, encephalopathy, meningitis, right hemiplegia, COVID 19, and leukocytosis. He was admitted for further care and started on antibiotics to include Vancomycin and Ceftriaxone.

39. Mr. Lopez started having seizures (having four seizures in less than 24 hours) and was intubated. Because of his presentation and worsening condition, he was transferred to Presbyterian Hospital on March 7, 2021 – a facility able to provide a higher level of care. At the time of admission at Presbyterian Hospital, Mr. Lopez was assessed to have acute encephalopathy

with status epilepticus, acute meningoencephalitis, acute hypoxic respiratory failure, circulatory shock, and elevated D-dimer.

40. An MRI of his brain was completed on March 13, 2021 which revealed 1) multiple enhancing empyema pockets undersurface of the left cerebral hemisphere as well as in the medical aspect of the midline, 2) abnormal proteinaceous material within the arachnoid space on the surface of the left cerebral hemisphere consistent with meningitis, 3) several small foci of restricted diffusion in the cortex and deep white matter, 4) abnormal material in the dependent aspect of both lateral ventricle concerning for ventriculitis, 5) generalized left brain edema with very minimal left to right midline shift, 6) mucosal disease in the left frontal sinus and the anterior left ethmoid labyrinth possibly the source of intracranial infection, and 7) no hydrocephalus.

41. On March 29, 2021, he underwent a left craniotomy for washout and evacuation of the subdural empyema and intracerebral abscesses. Intraoperatively, he was noted to have a skin laceration leading to the area of skin fracture with minimally depressed bone, a left pterional sylvian fissure region subdural empyema, a left paramedian skull fracture with minimally depressed bone, and granulomatous tissues extending through the fracture to the epidural space.

42. Mr. Lopez's injury, emergency treatment, hospitalizations, imaging, and surgery were caused by the failure to appropriately diagnose, treat, and refer Mr. Lopez for a higher level of care associated with his presentation of an infected scalp laceration.

43. Because of these failures, Mr. Lopez suffered severe and permanent injuries to include subdural empyema with meningitis, ventriculitis, status epilepticus, acute hypoxic respiratory failure, sepsis and septic shock, acute metabolic infectious encephalopathy, anxiety and depression, severe emotional distress, pain and suffering, and morbidity.

44. Mr. Lopez was discharged from Presbyterian Hospital on April 2, 2021. At the time of discharge, he had a PICC line in place to complete a course of antibiotics at a skilled nursing facility. Mr. Lopez was not discharged to a skilled nursing facility, but instead was returned to NMCD at CNMCF placed in the Long Term Care Unit.

45. Additionally, it was recommended by the providers at Presbyterian Hospital that Mr. Lopez been seen in follow up by Infectious Disease and Neurosurgery.

46. Defendants did not ensure that Mr. Lopez had the recommended follow up appointments.

47. Subsequently, Mr. Lopez was returned to NENMCF on May 26, 2021, and then transferred to LCCF on September 16, 2021, where he is currently housed by NMCD.

48. Since his return to NMCD custody on April 2, 2021, Mr. Lopez continues to have difficulties associated with his injury to include a seizure disorder, difficulty with memory and comprehension, excessive worrying, depression and anxiety, difficulty coping, and increased stress related to his injury.

49. Since his return to NMCD custody on April 2, 2021, Mr. Lopez has been denied mental health services and medications to assist with his ongoing problems associated with his injury.

50. The Defendants' failure to adhere to the treatment recommendations made by outside providers and to address his ongoing medical needs has caused Mr. Lopez additional harm, increased his pain and suffering, and upon information and belief, adversely impacted his overall prognosis and healing.

51. Defendants Wexford and Doe Medical providers were all aware that Mr. Lopez was exhibiting signs of a wound infection to his scalp, but took no meaningful action to address his

complaints and significant medical findings. Instead, these Defendants suspected that Mr. Lopez had an infection, but failed to conduct an appropriate wound assessment and timely refer Mr. Lopez to definitive drainage of an infected wound and an timely and appropriate antibiotic regimen.

52. Despite multiple opportunities to provide care to Mr. Lopez and refer him to a higher level of care, Defendants Wexford and the Doe Medical providers were grossly negligent and deliberately indifferent to Mr. Lopez’s 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.

53. None of these medical professionals took any action to ensure that Mr. Lopez was sent to an off-site medical provider or otherwise provided with necessary care beginning January 16, 2021 (when he first requested care), and between February 16, 2021, through March 3, 2021, despite knowing that he required additional medical services in order to safeguard his health and wellbeing.

54. Upon information and belief, Doe Corrections Officers made observations of and received complaints from Mr. Lopez regarding his ongoing pain, infection, and need for wound care from January 16, 2021, through March 3, 2021, and no action was taken to ensure Mr. Lopez received medical care.

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

55. NENMCF, CNMCF, and LCCF are operated in accordance with all NMCD rules, policies, and procedures.

56. NMCD is responsible for contracting medical services for all NMCD facilities, including NENMCF, CNMCF, and LCCF, 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.

57. 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. Lopez. 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.

58. 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."

59. 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.

60. 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.

61. 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.

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

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

64. 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.

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

66. In failing to address Mr. Lopez'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(T): “Medical or dental adaptive devices (eyeglasses, hearing aids, dentures, wheelchairs, or other prosthetic devices) are provided when medically necessary as determined by the responsible health care practitioner.”
- 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.”

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

68. The terms of the PSC were clearly meant to benefit the prisoners in NMCD’s custody, making Mr. Lopez 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. Lopez.

**B. WEXFORD'S WIDESPREAD PATTERNS AND PRACTICES OF PROVIDING UNCONSTITUTIONAL MEDICAL CARE WERE KNOWN TO NMCD.**

69. 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. Lopez'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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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. Lopez, who were entrusted to Wexford's care.

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

79. As a result of Defendants' unlawful conduct, Mr. Lopez suffered serious and permanent personal injuries to include subdural empyema with meningitis, ventriculitis, status epilepticus, right sided hemiplegia, acute hypoxic respiratory failure, sepsis and septic shock, acute metabolic infectious encephalopathy, anxiety and depression, memory problems, 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.

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

81. NMCD and Wexford are liable for damages caused by their respective employees and other 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)**

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

83. In operating the NENMCF, CNMCF, and LCCF 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.

84. 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.

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

86. 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.

87. 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. Lopez and was the cause of Mr. Lopez's injuries.

88. Defendants wholly failed to exercise reasonable care to prevent and correct these dangerous conditions at NENMCF, CNMCF, and LCCF. Defendants ignored the threats to prisoners' health and safety.

89. 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.

90. The actions or inactions of Defendants caused injury to Mr. Lopez.

91. 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.

92. Immunity for any “public employee” is waived for these Defendants’ negligence under NMSA § 41-4-6, as Mr. Lopez’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)**

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

94. In operating the medical facilities at the NENMCF, CNMCF, and LCCF, 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.

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

96. 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. Lopez. 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. Lopez. Moreover, NMCD and the individual NMCD Defendants maintained its own policies and practices of routine and extreme medical neglect of its inmates.

97. NMCD and the individual NMCD Defendants operated the medical facilities at NENMCF, CNMCF, and LCCF.

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

99. 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.

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

101. 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)**

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

103. 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. Lopez.

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

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

106. Mr. Lopez had no other source of medical care.

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

108. Defendant Wexford's conduct was extreme and outrageous undertaken with the intent to cause Mr. Lopez severe emotional distress.

109. Mr. Lopez suffered severe emotional distress.

110. The conduct of the Wexford and their respective employees, staff and agents was the cause of Mr. Lopez's severe emotional distress, entitling him to compensatory and punitive damages.

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

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

112. 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. Lopez and other NMCD prisoners.

113. In undertaking the diagnosis, care, and treatment of Mr. Lopez, 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.

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

115. 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 NENMCF, CNMCF, and LCCF to care for inmates such as Mr. Lopez, with the full knowledge that such inadequate staffing practices would place inmates such as Mr. Lopez 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. Lopez 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. Lopez infection was permitted to worsen causing severe pain and permanent disability;
- d) Failing to provide and implement proper care plans that would adequately meet Mr. Lopez's needs, including wound care and his risk for severe infection;
- e) Failing to timely assess, diagnose, and treat Mr. Lopez'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. Lopez's medical condition; and
- h) Failing to recognize Mr. Lopez's emergent need for a higher level of care that could not be provided at NMCD.

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

117. Based on the above, these Defendants' conduct foreseeably created a broader zone of risk to Mr. Lopez and other similarly situated prisoners with a heightened risk of infection and/or other medical vulnerabilities.

118. 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. Lopez.

119. 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 here were undertaken by Defendant Wexford within the scope of those Defendants' employment, contract, agency and/or apparent agency.

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

121. As a result of the acts or omissions of the Wexford Defendants, Mr. Lopez suffered serious and permanent personal injuries to include subdural empyema with meningitis, ventriculitis, status epilepticus, right sided hemiplegia, acute hypoxic respiratory failure, sepsis and septic shock, acute metabolic infectious encephalopathy, anxiety and depression, memory problems, 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.

122. To the extent any Wexford Defendant claims coverage under the New Mexico Tort Claims Act, Immunity is waived for any "public employee" Defendant's negligence 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)**

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

124. 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 NENMCF, CNMCF, and LCCF prisoner patients. These personnel were employed or contracted by Wexford.

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

126. Defendant Wexford failed to ensure that NENMCF, CNMCF, and LCCF was adequately staffed with medical personnel who were 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.

127. More specifically, Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of prisoners for wound care and with obvious signs of infection and/or increased risk of infection.

128. 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. Lopez.

129. 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. Lopez's medical condition.

130. 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. Lopez.

131. These failures along with Defendant's refusal to implement safety protocols to protect inmates such as Mr. Lopez created dangerous conditions arising from the operation of the NENMCF, CNMCF, and LCCF.

132. Defendant Wexford, in the exercise of reasonable care, should have been aware of the risks of severe infection to inmates such as Mr. Lopez 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.

133. 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. Lopez and similarly situated NMCD prisoners.

134. 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.

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

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

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

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

138. As an NMCD prisoner in the custody of NMCD, Mr. Lopez 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. Lopez adequate medical care.

139. 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.

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

141. 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.

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

143. 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. Lopez's injuries.

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

145. As a result of breach of contract, Mr. Lopez suffered injuries and damages, including consequential damages.

**JURY DEMAND**

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

**RELIEF REQUESTED**

WHEREFORE, Plaintiff requests judgment as follows:

A. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to Mr. Lopez under the New Mexico Tort Claims Act, and New Mexico tort, contract, and common law, including compensation for the intentional infliction of emotional distress;

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

C. Costs incurred by Mr. Lopez, including pre-judgment and post-judgment interest; and

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

