

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

D-202-CV-2023-02616

EUGENIO S. MATHIS, as Personal Representative
of the ESTATE OF NICHOLAS MCCOY, deceased
and ARTHUR MCCOY,

Plaintiffs,

v.

BOARD OF COUNTY COMMISSIONERS OF
BERNALILLO COUNTY; CENTURION DETENTION
HEALTH SERVICES, LLC; and JOHN/JANE DOES
1-10 in their individual and official capacities
(employees, staff, agents of the Metropolitan Detention Center and/or
Centurion Detention Health Services, LLC),

Defendants.

**AMENDED COMPLAINT FOR MEDICAL MALPRACTICE,
WRONGFUL DEATH, INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS, VIOLATIONS OF THE NEW MEXICO
CONSTITUTION AND LOSS OF CONSORTIUM**

Plaintiffs, Eugenio S. Mathis, the Personal Representative of the Wrongful Death Estate of
Nicholas McCoy, and Arthur McCoy, (hereinafter “Plaintiffs”), by and through their attorneys,
Collins & Collins, P.C. and DeLara | Supik | Odegard P.C., submits this Amended Complaint for
Medical Malpractice, Wrongful Death, and Related Claims.

PARTIES, JURISDICTION, AND VENUE

1. Nicholas McCoy (“Mr. McCoy”) died on August 29, 2021, in Bernalillo County,
State of New Mexico.
2. At all relevant times, Mr. McCoy was an inmate in the care and custody of the
Metropolitan Detention Center (“MDC”), Bernalillo County, State of New Mexico.

3. Eugenio S. Mathis is the personal representative of the Estate of Nicholas McCoy, appointed on September 7, 2021, in the Fourth Judicial District Court, San Miguel County, State of New Mexico, and brings this Complaint on behalf of the Estate.

4. Plaintiff Arthur McCoy is the father of decedent Nicholas McCoy, and at all relevant times, was a resident of Bernalillo County, State of New Mexico.

5. Defendant Board of County Commissioners of Bernalillo County (“the County”) is a political subdivision of the State of New Mexico.

6. The allegations of the Complaint arise out of conduct occurring, in part, at the MDC, and pursuant to NMSA 1978, § 4-46-1, Plaintiff’s claims are brought against the County.

7. At all times material hereto, the County was a governmental entity and local public body as those terms are defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-3.

8. At all times material hereto, the County owned, operated, supervised, directed, and controlled the MDC, located in Bernalillo County, State of New Mexico.

9. Pursuant to NMSA 1978, §§ 4-44-19, 33-3-3 through 33-3-8, and 33-3-13, the County was mandated by statute to provide for the confinement of inmates incarcerated under its jurisdiction and had a corresponding obligation to appropriate funds and otherwise provide the necessary funding 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 system provided to inmates at the MDC.

10. Upon information and belief, John/Jane Does 1-5 were employed by the County as personnel of the MDC responsible for providing correctional services at the MDC.

11. At all relevant times, Centurion Detention Health Services, LLC (“Centurion”) was contracted to provide health care services to inmates under the care and custody of the MDC.

12. Centurion is a domestic limited liability company licensed to do business in the State of New Mexico and may be served through its registered agent, CT Corporation System, 206 S. Coronado Avenue, Espanola, New Mexico 87532.

13. Defendant Centurion 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.

14. At all relevant times and upon information and belief, John/Jane Does 6-10 were employees, staff and/or agents of Defendant Centurion and were responsible for supervising and providing health care services to inmates at the MDC.

15. A Tort Claims Notice was sent to Bernalillo County and MDC on 09/02/21, and an Amended Notice of Claims was sent on 10/11/21 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).

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

STATEMENT OF FACTS

A. Medical Facts

17. On or about July 7, 2021, Nicholas McCoy was booked into the MDC.

18. On or about July 27, 2021, Mr. McCoy was tested for COVID-19, and his test was negative.

19. On or about August 19, 2021, Mr. McCoy was tested for COVID-19 and his test was positive as of August 23, 2021. He was placed in COVID isolation at that time.

20. Between August 23, 2021, and August 28, 2021, Mr. McCoy was not monitored, assessed, or evaluated for signs of increased symptoms related to COVID-19.

21. Instead, on August 28, 2021, Mr. McCoy was evaluated by medical personnel at the request of corrections for the first time since his positive test result with notations that he was diagnosed with COVID on August 26, 2021 (which was not accurate) and noting that he had “increasing shortness of breath” despite no prior record documenting shortness of breath.

22. Mr. McCoy reported that for the past three days, he had experienced tingling in his upper extremities, intermittent loss of vision, a productive cough, and coughing up blood.

23. During his first examination, he was observed to use accessory muscles to breath and his pulse oximeter reading was in the low 70’s. On examination, it was noted he had diminished breath sounds bilaterally in the lower lobes, rhonchi present bilaterally in the upper lobes, and an elevated heart rate. Pneumonia secondary to COVID-19 was suspected.

24. On August 28, 2021, Mr. McCoy was transported emergently to the University of New Mexico Hospital (“UNMH”) for evaluation and treatment. Mr. McCoy left the MDC on August 28, 2021, at 1345.

25. On evaluation at UNMH, Mr. McCoy was noted to be “critically ill” with acute hypoxic respiratory failure, acute COVID pneumonia, acute viral sepsis, acute kidney injury, acute hypoglycemia, acute lactic acidosis, and acute hypomagnesemia. He was admitted to the intensive care unit in guarded condition.

26. Later in the evening on August 29, 2021, Mr. McCoy’s condition deteriorated further, and he was intubated and ventilated.

27. Mr. McCoy's condition continued to decline. By August 29, 2021, he was in "severe septic shock in setting of COVID pneumonia and multi-organ failure."

28. Mr. McCoy went into cardiac arrest. CPR was performed for 16 minutes, but he never regained a pulse. He died on August 29, 2021, at 12:01.

29. Following the positive COVID diagnosis of Mr. McCoy, Defendants failed to adequately monitor and evaluate his condition for symptoms, worsening of symptoms, or a need for a higher level of care.

30. Because of their lack of monitoring and evaluation, Mr. McCoy's condition was allowed to decline without any intervention whatsoever. By the time he received an appropriate evaluation recognizing the need for an emergent level of care, he was already critically ill and died less than 24 hours later.

31. Defendants Centurion and the County, including unidentified John/Jane Doe Defendants, acted with wanton, willful, and deliberate indifference by ignoring Mr. McCoy's medical needs, refusing to provide any level of monitoring by corrections staff, and refusal to provide any level of monitoring, assessment, and treatment by medical staff to the detriment of Mr. McCoy.

32. The death of Mr. McCoy was caused by the Defendants failure to ensure that he received appropriate and timely medical care following his positive COVID-19 test on August 23, 2021 through August 28, 2021.

33. The failure to monitor and treat Mr. McCoy was grossly negligent, reckless, and deliberately indifferent to a known serious medical need and such failures caused or contributed to his death.

34. Defendants Centurion and the County knew or should have known of the need to train their respective employees and/or agents on their policies and procedures and the appropriate standards in monitoring inmates and treating inmates.

35. The County has a non-delegable duty to provide proper, necessary and competent medical care for all inmates at the MDC, including Mr. McCoy.

36. The County is responsible for the management and oversight of the MDC, including its medical contractor, Defendant Centurion.

37. The County failed to properly oversee, monitor, supervise, or manage Defendant Centurion's operation of the medical facility at the MDC and the provision of medical services to inmates, including Mr. McCoy.

38. The County and/or Centurion failed to properly implement policies and procedures for monitoring and evaluating inmates who test positive for COVID-19.

39. The County failed to take corrective action against Centurion despite clear knowledge of the ongoing and prevalent negligent and reckless provision of medical services provided to inmates at the MDC, including Mr. McCoy.

B. Widespread patterns and practices of Centurion and the County

40. Defendants Centurion and the County maintained widespread patterns, practices, and de facto standard operating procedures in the operations at the MDC to the harm of all inmates, including Mr. McCoy, all in violation of his state constitutional rights and caused and contributed to his death, to include:

- 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) 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) Failing to hire, retain, train, and supervise its employees and agents on procedures necessary to protect patients' health;
- f) Failing to reprimand, provide additional training, retrain, or take any other corrective action against Centurion medical providers engaging in cruel, callous, and unconstitutional denial of medical care to inmates;
- g) Ignoring and failing to supervise and monitor inmates who are suffering from medical events in need of evaluation by both correctional and medical staff.

41. The County and Centurion have a longstanding policy and practice, directed, supervised and/or ratified by supervisory personnel of the County and Centurion under which employees and agents of these Defendants, 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 inmates and reassessment of inmates 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.

42. These widespread practices amounted to standard operating procedures in the operation of the MDC. These practices are clearly illustrated in court cases and have been extensively and expansively covered by the media.

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

44. Defendants Centurion and the County were complicit and acquiesced in the denial of proper and necessary medical care to Mr. McCoy through their failures to follow written policies and procedures and instead implement a pattern and practice of denying medical care.

45. Defendants Centurion and the County conspired together to deny Mr. McCoy necessary and proper medical care leading to physical pain, severe emotional and psychological pain and suffering, and wrongful death.

46. The County had knowledge, through its own institutional experience, of Centurion's pervasive and persistent constitutionally deficient medical care. In addition, the County can be imputed knowledge from all the cases and media reports documenting the same.

47. In essence, Centurion's medical care of MDC inmates effectively amounted to no care at all, a fact of which the County is well aware.

48. Upon information and belief, Centurion maintained these practices to maximize profit and without regard to its constitutional and medical obligations to MDC prisoners, including Mr. McCoy, who were entrusted to Centurion's care.

49. These standard operating procedures were the moving forces behind the misconduct at issue in the instant case.

COUNT I: VIOLATION OF INHERENT AND INALIENABLE RIGHT TO LIFE AND SAFETY OF ARTICLE II, § 4 OF THE NEW MEXICO STATE CONSTITUTION AGAINST DEFENDANTS CENTURION AND THE COUNTY

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

51. 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.

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

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

54. The facts set forth above plainly violated Mr. McCoy's inherent inalienable rights to life and safety.

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

56. As a result of the unconstitutional acts or omissions of these Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering, and as a result is entitled to all available damages under the Wrongful Death Act and the New Mexico Civil Rights Act, including punitive damages.

**COUNT II: DENIAL OF MEDICAL CARE IN VIOLATION OF ARTICLE II,
§§ 13 AND 18 OF THE NEW MEXICO STATE CONSTITUTION AGAINST
DEFENDANTS CENTURION AND THE COUNTY**

57. Each paragraph of this Complaint is incorporated as if fully stated herein.

58. These Defendants were aware that Mr. McCoy's medical condition caused him to face a substantial risk of serious harm without appropriate action.

59. Despite that knowledge, Defendants failed to provided Mr. McCoy with proper medical care, access to medical care, and/or failed to intervene to obtain necessary medical care for Mr. McCoy in violation of Article II, § 13 of the New Mexico Constitution.

60. Prior to the events giving rise to Plaintiff's Complaint, Defendants were on notice of the above-described practices of denial of necessary and proper medical care to inmates.

61. Prior to the events giving rise to the Plaintiff's Complaint, Defendants were on notice of the need to develop and implement policies to monitor and evaluate inmates with COVID-19.

62. Defendants and their respective supervisory personnel maintained and ratified the unconstitutional practices directly resulting in the violation of Mr. McCoy's right to constitutionally adequate medical care.

63. Defendants and their respective employees, staff, and agents colluded and conspired to deny Mr. McCoy his right to constitutionally minimally acceptable medical care.

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

65. As a result of the unconstitutional acts or omissions of these Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering, and as a

result is entitled to all available damages under the Wrongful Death Act and the New Mexico Civil Rights Act, including punitive damages.

COUNT III: POLICY AND PRACTICE OF DENIAL OF MEDICAL CARE IN VIOLATION OF ARTICLE II, §§ 13 AND 18 OF THE NEW MEXICO STATE CONSTITUTION AGAINST DEFENDANTS CENTURION AND THE COUNTY

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

67. The actions and inactions of Defendants and their respective employees, staff, and agents constitute long-standing unconstitutional policies and practices of both Centurion and the County. The policies and practices amount to standard operating procedures for both Centurion and the County.

68. Under NMSA 1978, § 41-4A-3(C), Defendants were responsible for the creation, implementation, oversight, and supervision of all policies and procedures followed by their respective employees and/or agents.

69. Centurion's practices set forth above were adopted by and are imputed to the County. The County colluded with, encouraged, ratified and/or actively conspired in Centurion's unconstitutional practices.

70. Defendants Centurion and the County are liable for their own practices as well as the very well-documented practices of Centurion. These Defendants 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 MCD inmates, including Mr. McCoy, the right to constitutionally protected medical care.

71. These Defendants were acting under the color of law resulting in cruel and unusual punishment against Mr. McCoy.

72. Mr. McCoy's injuries were caused by these Defendants' ongoing practice of routine denial of medical care to MCD inmates.

73. As a result of the unconstitutional acts or omissions of these Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering, and as a result is entitled to all available damages under the Wrongful Death Act and the New Mexico Civil Rights Act, including punitive damages.

**COUNT IV: VIOLATION OF DUE PROCESS IN VIOLATION OF ARTICLE II,
§ 18 OF THE NEW MEXICO STATE CONSTITUTION AGAINST DEFENDANTS'
CENTURION AND THE COUNTY**

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

75. Mr. McCoy 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.

76. Defendants' actions and inactions were intentional, conscience-shocking, wanton, arbitrary and capricious, and in gross and reckless disregard of, and deliberately indifferent to, Mr. McCoy's constitutional rights.

77. 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. McCoy to these terrifying, degrading, and life-threatening circumstances—repeatedly, over time, and after deliberation.

78. Such treatment approximates torture, and its severity implicates Mr. McCoy's substantive due process rights, particularly in the context of the state constitution, which provides broader protections than the federal constitution. These government actors were abusing their

power to the highest degree and wielding it as an instrument of oppression in violation of Mr. McCoy's substantive due process rights.

79. As a result of the unconstitutional acts or omissions of these Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering, and as a result is entitled to all available damages under the Wrongful Death Act and the New Mexico Civil Rights Act, including punitive damages.

COUNT V: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN VIOLATION OF NEW MEXICO COMMON LAW AGAINST DEFENDANT CENTURION AND IN VIOLATION OF ARTICLE II, § 13 OF THE NEW MEXICO STATE CONSTITUTION AGAINST DEFENDANTS CENTURION AND THE COUNTY

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

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

82. Mr. McCoy was totally reliant upon Defendants for the provision of necessary and proper medical care. Mr. McCoy had no other source of medical care. Mr. McCoy had no option in selecting his medical providers. As such, Defendants had a special relationship with Mr. McCoy which gave them extraordinary, unilateral authority over the provision of necessary and proper medical care.

83. Defendants' conduct was extreme and outrageous undertaken with the intent to cause Mr. McCoy severe emotional distress in violation of New Mexico common law and under Article II, § 13 of the New Mexico Constitution.

84. Mr. McCoy did suffer severe emotional distress.

85. The conduct of Defendants Centurion and the County and their respective employees, staff, and agents was the cause of Mr. McCoy's severe emotional distress, entitling Plaintiff to an aware of compensatory and punitive damages.

**COUNT VI: NEGLIGENT OPERATION OF A PUBLIC BUILDING AGAINST
DEFENDANTS CENTURION UNDER NEW MEXICO COMMON LAW AND THE
COUNTY UNDER THE NEW MEXICO TORT CLAIMS ACT**

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

87. At all relevant times, the Defendants, acting through their employees, agents, apparent agents, or contractors, who were acting within the scope of their employment, agency, apparent agency, or contract were negligent in the operation of the MDC.

88. In operating the MDC, the County and Centurion, its medical contractor, 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.

89. The County has the authority and control over the MDC, along with a consequent duty to operate the facility so as not to endanger the health and safety of those utilizing the facility, including the inmates, such as Mr. McCoy.

90. Defendants failed to enforce any standards of care related to the monitoring of inmates and related to the medical care of inmates. Instead, Defendants implemented and ratified dangerous practices leading to extreme medical neglect of inmates under the care of Defendants, including Mr. McCoy.

91. The Defendants customs and practices created a general condition of unreasonable risk to inmates at the MDC due to negligent safety practices concerning identifying and addressing the medical needs of inmates.

92. The Defendants practice of breaching their own written policies and procedures and practice of breaching their duties in the operation of the MDC caused a foreseeable risk of injury to all inmates, created a specific foreseeable risk to Mr. McCoy, and was the cause of Mr. McCoy's death.

93. Defendants failed to exercise reasonable care to prevent and correct these dangerous conditions at the MDC, and in doing so, ignored the threats to prisoners' health and safety.

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

95. As a result of the acts or omissions of Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering.

96. Specific to the County, immunity for any "public employee" is waived under NMSA 1978, § 41-4-6 as Plaintiff's injuries arose from an unsafe, dangerous, and defective condition on property owned and operated by the government.

COUNT VII: NEGLIGENT OPERATION OF A MEDICAL FACILITY AGAINST DEFENDANTS CENTURION UNDER NEW MEXICO COMMON LAW AND THE COUNTY UNDER THE NEW MEXICO TORT CLAIMS ACT

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

98. In operating the MDC medical facility, these Defendants were under a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

99. The County has authority and control over the MDC and the medical unit within the MDC.

100. Defendant Centurion had authority and control over the operation of the medical unit within the MDC, and such operations were required to be in compliance with written policies and procedures.

101. Defendants did not enforce any standards of care related to the operation of the medical unit at the MDC. Instead, Defendants implemented and ratified dangerous practices leading to extreme medical neglect of inmates under the care of Defendants, including Mr. McCoy.

102. The actions of all Defendants in the operation of the medical facility at the MDC caused harm to all inmates, including Mr. McCoy.

103. As a result of the acts or omissions of Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering.

104. Specific to the County, immunity for any “public employee” is waived under NMSA 1978, § 41-4-9 as Plaintiff’s injuries arose from the operation of the MDC’s medical facility and these “public employees” were acting within the scope of their duties.

COUNT VIII: MEDICAL MALPRACTICE AGAINST DEFENDANT CENTURION

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

106. At all relevant times, the above Defendant and its employees, agents, apparent agents, and/or contractors were each healthcare providers providing health services to Mr. McCoy.

107. In undertaking the diagnosis, care, and treatment of Mr. McCoy, Defendant Centurion, acting through its employees, agents, apparent agents, and/or contractors, 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.

108. Centurion and its employees, agents, apparent agents, and/or contractors breached their duties and were negligent in the management of Mr. McCoy's health and well-being.

109. The negligence, errors, and other acts and omissions of Defendant Centurion include, but are not limited to:

- a) Failing to provide adequate staff and adequately trained staff at the MDC to care for inmates such as Mr. McCoy, with the full knowledge that such inadequate staffing practices would place inmates such as Mr. McCoy at risk of injury;
- b) Negligently hiring, retaining, training, and supervising staff at the MDC, with the full knowledge that such negligent staffing practices would place inmates such as Mr. McCoy at risk of injury;
- c) Failing to monitor and/or conduct a comprehensive and timely medical evaluation of Mr. McCoy;
- d) Failing to adequately diagnose, monitor, treat and manage Mr. McCoy's medical condition; and
- e) Failing to recognize Mr. McCoy's need for a higher level of care that could not be provided at the MDC on a timely basis.

110. Defendant's actions and failures to act fell below the standard of care to the detriment of Mr. McCoy.

111. Defendant's actions and failures to act were at minimum, negligent, and were willful, wanton and in reckless disregard for the safety and well-being of Mr. McCoy.

112. All acts or omissions done by Defendant Centurion and its employees, agents, apparent agents, and/or contractors, were done within the scope of their employment, agency, or contract.

113. All acts complained of herein were authorized, participated in, or ratified by Defendant Centurion and/or its administrators, managers, officers, directors, or shareholders.

114. As a result of the acts or omissions of Defendant Centurion and its willful, wanton, and reckless conduct, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering.

**COUNT IX: NEGLIGENT HIRING, TRAINING AND SUPERVISION AGAINST
DEFENDANTS CENTURION UNDER NEW MEXICO COMMON LAW AND THE
COUNTY UNDER THE NEW MEXICO TORT CLAIMS ACT**

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

116. These Defendants were each responsible and had a duty to properly screen, supervise, educate, and train their employees, agents, and/or contractors operating the MDC.

117. Defendants were each responsible and had a duty to properly screen, supervise, educate, and train their employees, agents, and/or contractors regarding the proper treatment of inmates suffering from a known medical condition.

118. Defendants failed to train and supervise its employees, contractors, or agents in such a manner as to accurately assess, treat, and manage the medical needs of inmates, such as Mr. McCoy, and/or to render aid to inmates with ongoing and emergent medical conditions.

119. Upon information and belief, these Defendants failed to follow through with or otherwise enforce policies and related contract provisions regarding prisoners with medical issues, which they were each responsible for overseeing.

120. These Defendants failed to take corrective action against employees, agents or contractors who it knew were not providing appropriate care in the management of the medical needs of inmates, such as Mr. McCoy.

121. Defendants failed to properly screen, supervise, educate, and train its employees, contractors, and agents in the symptoms, diagnosis, treatment, referral or intervention of medical conditions of inmates generally and specifically, the medical condition of Mr. McCoy.

122. These failures, along with Defendants refusal to implement safety protocols to protect inmates such as Mr. McCoy created dangerous conditions arising from the operation of the MDC.

123. The Defendants, in the exercise of reasonable care, should have been aware of the risks of failing to address the medical needs of inmates such as Mr. McCoy and should have protected against the resulting harm by controlling the conduct of the County and Centurion personnel over which they had supervisory authority, including the individual Doe medical personnel and corrections officers.

124. These supervisory Defendants failed to use ordinary care in their training, staffing, and supervising practices and had knowledge that their practices created an unreasonable risk of injury to Mr. McCoy and similarly situated MDC inmates.

125. These dangerous conditions were severe and foreseeable such that Defendants had a duty of care to oversee, discover, and prevent the MDC personnel's dangerous responses to the ongoing management of prisoner medical care and medical emergencies.

126. Defendants violated their duty of care and failed to provide services necessary to safely operate a public prison facility and medical facility.

127. As a result of the acts or omissions of Defendants, Mr. McCoy suffered injury, including death, emotional distress, and pain and suffering.

128. Specific to the County, immunity is waived for any "public employee" under NMSA 1978, § 41-4-6 because Defendants' negligent training, staffing, and supervision were

directly tied to the operation of the MDC building. The MDC was ordinarily dangerous even in the absence of Defendants' inadequate supervision and training, and these dangerous conditions required supervision and were known or should have been known to Defendants.

COUNT X: BREACH OF CONTRACT, THIRD PARTY BENEFICIARY IN VIOLATION OF NEW MEXICO CONTRACT LAW (ALL DEFENDANTS)

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

130. As a prisoner in the custody of MDC, Mr. McCoy was a third-party beneficiary to the Bernalillo County contract with Centurion that was in place at all times relevant to this Complaint and through which Centurion was obligated to provide Mr. McCoy adequate medical and mental health care.

131. The scope of services identified in the PSA includes an expansive explanation of requirements for Centurion's medical services to be provided by Centurion to MDC prisoners, including Mr. McCoy.

132. Each of these sections almost exclusively concerns MDC prisoners and is meant to benefit them.

133. As an intended beneficiary to the contract for medical services between MDC and Centurion, Mr. McCoy, by and through Plaintiff, has standing to enforce the terms of the contract.

134. During the timeframe relevant to this Complaint, Centurion and their agents materially breached multiple provisions of the PSA, and these violations were a cause of Mr. McCoy's injuries.

135. Bernalillo County acquiesced in these breaches.

136. MDC and Centurion are liable for damages caused by their employees and other agents for these failures and breaches.

137. As a result of breach of contract, Mr. McCoy died unnecessarily.

**COUNT XI: CONSPIRACY TO VIOLATE THE CIVIL RIGHTS OF
NICHOLAS MCCOY (ALL DEFENDANTS)**

138. Each of the Paragraphs of this Complaint is incorporated as if fully stated herein.

139. Defendants by agreement and by action in furtherance of that agreement designed to deprive Nicholas McCoy of his constitutional rights under the New Mexico Constitution.

140. In furtherance of the conspiracy, each of the co-conspirators committed overt acts and was an otherwise willful participant in joint activity.

141. The misconduct described in this Count was undertaken intentionally, with malice, and/or with reckless indifference to the constitutional rights of Nicholas McCoy.

142. As a direct and proximate result of the illicit prior agreement referenced above, Nicholas McCoy's rights were violated and he suffered injuries, including but not limited to extreme emotional distress and death.

143. Nicholas McCoy's death was caused by employees of the Defendants, who acted pursuant to the policies and practices described more fully above.

COUNT XII: LOSS OF CONSORTIUM (ALL DEFENDANTS)

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

145. At all relevant times, Plaintiff Arthur McCoy and decedent Nicholas McCoy were father and son.

146. At all relevant times, Plaintiff Arthur McCoy and decedent Nicholas McCoy resided within the same household.

147. At all relevant times, Plaintiff Arthur McCoy and decedent Nicholas McCoy shared a close and intimate familial relationship.

148. At all relevant times, Plaintiff Arthur McCoy and decedent Nicholas McCoy had a mutually dependent relationship and relied upon each other emotionally and for companionship.

149. As a result of Defendants' actions and inactions, Plaintiff Arthur McCoy has suffered a loss of consortium, as he is unable to enjoy life in the same way he once did after Mr. McCoy's death.

150. As a result of Defendants' actions and inactions, Plaintiff Arthur McCoy has been harmed and is entitled to damages.

JURY DEMAND

151. 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 Centurion and the County separately as distinct public bodies each individually liable for up to "the maximum recovery limit" outlined in NMSA § 41-4A-6;
- B. Compensatory damages against all Defendants, in an amount to be determined by this Court under the New Mexico Tort Claims Act and New Mexico common law;
- C. Punitive damages in an undetermined amount against Centurion;
- D. Costs incurred by Mr. McCoy, including pre-judgment and post-judgment interest;
- E. Reasonable attorneys' fees under the New Mexico Civil Rights Act; and
- F. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,
COLLINS & COLLINS, P.C.

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-and-

DELARA | SUPIK | ODEGARD P.C.

/s/ Alisa Wigley-DeLara
Christopher J. DeLara
Christopher J. Supik
David C. Odegard
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Attorneys for Plaintiffs

I HEREBY CERTIFY that on the 23rd day of August 2023, I filed the foregoing Amended Complaint for Medical Malpractice, Wrongful Death, Intentional Infliction of Emotional Distress, Violations of the New Mexico Constitution and Loss of Consortium electronically through the State of New Mexico's Odyssey File & Serve system, requesting that the following counsel be served through Odyssey and that I caused a copy of the same to be served by email to all counsel of record.

/s/ Alisa Wigley-DeLara