SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

APRIL SORIA, as personal representative of the ESTATE OF RICARDO CRUZ MEJIA, deceased, and on behalf of J.M., a minor, age 12; and A.D., a minor, age 7,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT OF CORRECTIONS; KENNETH MOORE, P.A., in his individual capacity; DR. BARRY KELLOGG, in his individual capacity; DR. JAMES EDWARDS, in his individual capacity; SHIRLEY NEISNER, ARNP, in her individual capacity; KYLE KING, in his individual capacity; and DR. STEVE HAMMOND, in his individual capacity,

Defendants.

No. 13-2-02598-9

COMPLAINT FOR DAMAGES

WITH JURY DEMAND

Plaintiffs, by and through their lawyers, Jesse Wing and MacDonald Hoague & Bayless, bring this complaint and allege that while in state custody, Ricardo Mejia's medical providers ignored obvious signs of infection and serious illness and he literally rotted to death under their care through negligence and deliberate indifference. He died a horrible, grotesque, and painful death, at age 26. Since the Defendants were responsible for his health care and his death, which they could have been prevented, they are liable for the damages to his Estate, and his two minor children.

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I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over this matter pursuant to RCW 4.28.020 and RCW 4.28.080. The Superior Court of Thurston County, State of Washington, has subject matter jurisdiction over this action pursuant to RCW 2.08.010.

1.2 Venue is proper in and for Thurston County because the State resides in Thurston County, Washington.

II. ADMINISTRATIVE EXHAUSTION

2.1 In April 2013, the Plaintiffs presented a tort claim form for damages to the State of Washington in accordance with RCW 4.92.100, which the State acknowledged by letter that it received on April 25, 2013. Over sixty days have passed since Plaintiffs presented their tort claim to the State. Accordingly, Plaintiffs have exhausted the claim waiting period requirement, and their claims are properly before the Court.

2.2 On April 24, 2013, Plaintiffs served Notice on Defendants under RCW 7.70.100 of intent to commence an action based upon a health care provider's professional negligence. Over ninety days have passed since Plaintiffs sent their Notice to Defendants. Although no longer required by law, Plaintiffs have exhausted any Notice requirement under RCW 7.70.100.

III. PARTIES

3.1 Plaintiff Estate of Ricardo Cruz Mejia is the legal entity authorized to continue claims on behalf of Ricardo Mejia that survive his death and to pursue claims on behalf of beneficiaries of his Estate and on behalf of certain surviving relatives—in this case, Ricardo Mejia's minor children, J.M. and A.D. April Soria is the court-appointed personal representative of Plaintiff Estate of Ricardo Cruz Mejia and she is authorized to bring this action.

3.2 Plaintiff J. M. is the minor son of Ricardo Mejia. April Soria is the court-appointed litigation guardian, authorized to bring this action for J. M.

3.3 Plaintiff A. D. is the minor daughter of Ricardo Mejia. April Soria is the court-appointed litigation guardian, authorized to bring this action for A. D.

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3.4 Defendant Kenneth Moore, P.A. was at all relevant times a State employee or contractor of Defendant Washington Department of Corrections. At relevant times, this Defendant personally provided health care to Ricardo Mejia while he was incarcerated at the Washington State Penitentiary. All acts and omissions alleged in this Complaint against this Defendant occurred within the scope of the Defendant's official duties and were under color of state law. This Defendant is sued in his personal capacity for money damages.

3.5 Defendant Barry Kellogg, M.D. was at all relevant times a State employee or contractor of Defendant Washington Department of Corrections. At relevant times, this Defendant personally provided health care to Ricardo Mejia while he was incarcerated at the Washington State Penitentiary. All acts and omissions alleged in this Complaint against this Defendant occurred within the scope of the Defendant's official duties and were under color of state law. This Defendant is sued in his personal capacity for money damages.

3.6 Defendant James Edwards, M.D. was at all relevant times a State employee or contractor of Defendant Washington Department of Corrections. At all relevant times, Dr. Edwards was the Medical Director of the Washington State Penitentiary while Ricardo Mejia was incarcerated there. As such, Dr. Edwards was responsible for ensuring that the care provided to Ricardo Mejia complied with the law. In addition, Dr. Edwards was the physician sponsor of Kenneth Moore, P.A., allowing Mr. Moore to practice as a physician's assistant at the Washington State Penitentiary under Dr. Edwards's supervision. As such, Dr. Edwards was responsible to ensure that Mr. Moore's health care treatment of Ricardo Mejia complied with the law. All acts and omissions alleged in this Complaint against this Defendant occurred within the scope of the Defendant's official duties and were under color of state law. This Defendant is sued in his personal capacity for money damages.

3.7 Defendant Shirley Neisner, ARNP was at all relevant times a State employee or contractor of Defendant Washington Department of Corrections. At relevant times, this Defendant personally provided health care to Ricardo Mejia while he was incarcerated at the Washington State Penitentiary. All acts and omissions alleged in this Complaint against this

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Defendant occurred within the scope of the Defendant's official duties and were under color of state law. This Defendant is sued in her personal capacity for money damages.

3.8 Defendant Kyle King was at all relevant times a State employee or contractor of Defendant Washington Department of Corrections. At relevant times, this Defendant was the Health Care Manager for Washington State Penitentiary and as such was responsible for hiring and maintaining qualified and competent medical staff to provide health care to Ricardo Mejia while he was incarcerated at the Washington State Penitentiary. All acts and omissions alleged in this Complaint against this Defendant occurred within the scope of the Defendant's official duties and were under color of state law. This Defendant is sued in his personal capacity for money damages.

3.9 Defendant Steve Hammond, M.D. was at all relevant times a State employee or contractor of Defendant Washington Department of Corrections. At relevant times, this Defendant was the Medical Director for the State Washington Department of Corrections responsible for hiring and maintaining qualified and competent medical staff to provide health care to Ricardo Mejia while he was incarcerated at the Washington State Penitentiary, responsible for ensuring that the care provided to Ricardo Mejia complied with the law, and responsible for ensuring that the Penitentiary's health care policies, practices, and procedures provide for health care that complies with the law, and that they are properly implemented. All acts and omissions alleged in this Complaint against this Defendant occurred within the scope of the Defendant's official duties and were under color of state law. On information and belief, the Defendant resides in Thurston County, Washington. This Defendant is sued in his personal capacity for money damages.

IV. FACTS

May 2010 – early January 2011

4.1 In the months leading up to his death (beginning in May 2010), Ricardo Mejia was confined as a prisoner at Washington State Penitentiary in Walla Walla. After gastrointestinal symptoms and reports of blood in his stool continued over the course of several

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months, in mid-October 2010, a physician employed or contracted by the Penitentiary performed an endoscopy and colonoscopy on Ricardo, finding severe inflammation of the colon, which he diagnosed as ulcerative colitis.

4.2 A few days later, Ricardo began receiving treatment through the Penitentiary for ulcerative colitis with hydrocortisone enemas over three weeks, sulfasalazine tablets several times per day starting in late October, and a tapering course of prednisone tablets for a month.

4.3 But in mid-November 2010—about 60 days before his death—Ricardo developed symptoms of headache, sore throat, vomiting, and generalized aches. Initially, he was evaluated and treated with penicillin, but the rash did not subside.

4.4 Between November 29, 2010 and January 10, 2011, Ricardo's medical records at the Penitentiary show 14 separate instances where prison medical staff saw, and treated him, for a variety of medical conditions including skin rash, sore throat, and pain. The medical staff issued a number of topical skin treatments (corticosteroids, antihistamines, ibuprofen, medication to reduce stomach acid). But none of them resolved the increasingly painful, extremely uncomfortable, and troubling mix of unexplained symptoms he had been suffering for well over a month.

4.5 During this time, Defendants PA Moore and ARNP Shirley Neisner were among the providers who saw Ricardo Mejia and gave orders for his care.

January 9, 2011

4.6 On January 9, 2011, Ricardo Mejia had a fever and a sore throat and his tonsils were red and swollen. Medical staff failed to take vital signs and put him on the sick call for the following day.

January 10

4.7 The next day, January 10, 2011, Ricardo Mejia reported his "sore throat was worse than ever.... Hurts to breathe." DOC medical staff noted that he was "not able to sit still, is worked up...." Again vital signs were not taken. No new treatment was offered, only staff's unsuccessful "attempt to get viscous Lidocaine."

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January 11

4.8 With no relief in sight, on January 11, 2011, Ricardo Mejia declared a "medical emergency," reporting continued sore throat, nausea, vomiting, fever blisters, rectal pain, and pain in his hips, legs, joints, and muscles. He reported he had been unable to eat for three days. Medical staff recorded his pulse at 122/minute. His blood pressure sitting was 150/82, which dropped to 109/73 when he stood up.

4.9 That day, Defendant Physician Barry Kellogg saw Ricardo Mejia along with Defendant ARNP Shirley Neisner. And despite the medical records stating that Ricardo reported "rectal pain" and pain in his hips, legs, joints, and muscles, Dr. Kellogg saw the patient only "briefly" and examined only Ricardo's mouth and throat. And despite Ricardo Mejia's reports of rectal, oral and bodily pain, nausea, and vomiting, Dr. Kellogg represented to the Department of Health that Ricardo was "in no acute distress," which is nowhere in the medical record.

4.10 The medical record for January 11, 2011 shows a diagnosis of tonsillar exudates, aphthous ulcerations, and colitis (a condition located at the other end of the digestive tract from the location of Dr. Kellogg's claimed examination), and it shows that medical staff gave him prednisone (an oral corticosteroid) in a tapering schedule over the next six days. Dr. Kellogg did not diagnose, or investigate, the cause(s) of Ricardo's combination of unresolved and persistent symptoms. Nor did Dr. Kellogg write or dictate a medical note; rather, he left it to the nurse who completed "the encounter note and wrote orders."

4.11 Nurse Neisner had treated Ricardo on January 3 and January 10, 2011—the previous day, so had personally observed the scope of his illness, and that his condition was worsening. Department of Health records reflect that she had seen him "multiple times previously" for his rash but no change was made to the treatment plan. And she had also seen Ricardo the day before for ulcerations in his mouth and throat. Dr. Kellogg wrote to the Department of Health that Nurse Neisner did not inform him that Ricardo was suffering a rash or colitis—just a sore throat and sore mouth. And, he wrote that she did not mention his allergy to sulfasalazine. Nurse Neisner was present when Dr. Kellogg made his diagnosis and decision not

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to provide adequate treatment to Ricardo. She did not take steps to provide Dr. Kellogg all relevant medical information, or to question or seek a correction of Dr. Kellogg's diagnosis and inadequate treatment.

January 12

4.12 There is no medical record for Ricardo on January 12, 2011.

January 13

4.13 On January 13, 2011 at 8 am, Ricardo again reported a sore throat and blisters in his anal area. Defendant ARNP Neisner saw him again but, once again failed to take any vital signs. The examination showed two aphthous ulcers and erythematous papules around his anus. Staff diagnosed him with thrush, aphthous ulcers, and anal dermatitis/irritation. He reported that Hydrocortisone cream (prescribed on January 3, 2011) was not helping. He was given Nystatin (an oral antifungal). Again, there was no effort by Defendant Neisner or any medical staff to investigate or diagnose the combination of symptoms Ricardo presented.

January 14

4.14 The next day, January 14, 2011 at 2:10 pm, RN Alison Olson noted that Ricardo had mouth and rectal ulcers for the past six days that were now more painful, and that he was reporting abdominal pain. She noted that he had not had a bowel movement for four days and had a decreased appetite. His rectum showed a large excoriated, blistered area. Staff gave him Nystatin for his oral ulcers (that had been prescribed the day before but had not been delivered), Hydrocortisone for his rectum, Milk of Magnesia for constipation, and a topical anesthetic and moistened gauzes to place between his buttocks.

4.15 It appeared to Nurse Oleson that he had "oral and anal thrush" and was "quite sick;" "When this kid came to the exam room he was clearly in distress," so she called PA Moore who refused to see Ricardo or admit him to the Inpatient Unit. Instead, Mr. Moore merely gave a telephone order of Lidocaine for the pain. Once again, the medical staff gave Ricardo Mejia the most minor treatment, ignoring the symptoms of an infection that was growing out of control: unresolved rectal pain, abdominal pain, and sore throat together with

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objective findings of rapid pulse, low grade temperature, and ulceration in his mouth and near his rectum.

January 15

4.16 On the morning of January 15, 2011, Ricardo's symptoms got worse. Medical staff saw him four times through the night and early morning (at 0430, 0730, 0845, and 0900 hours). At 0430, Ricardo complained of 8/10 pain in his rectum and that the lidocaine gel was barely helping. His temperature was 97.9, pulse was 154, blood pressure 119/60. His buttock area was blistered and red. He was told to see medical staff in the morning.

4.17 Three hours later, at 0730, an RN reassessed him when he again reported his sore throat was unresolved, that the pimples on his buttocks were worse, that he was unable to sit and that he was having diarrhea. His blood pressure was 102/53, pulse 137, and respiratory rate 24. And he was restless. The nurse recommended that PA Moore see Ricardo. An hour and fifteen minutes later (at 0845), Mr. Moore saw Ricardo and noted that he had reported increasing pain in his anus, buttocks, and upper thighs for 3-5 days and that he was not responding to topical hydrocortisone or lidocaine. Noting Ricardo's history of ulcerative colitis, on examining him Mr. Moore described red, swollen buttocks sensitive to touch, making it difficult for Ricardo to sit. Mr. Moore diagnosed cellulitis and increased heart rate. He initially denied Ricardo admittance to the Inpatient Unit (IPU) and planned to return him to his cell, but after a nurse repeatedly pressed him Mr. Moore relented. Ricardo was given Septra DS (an oral sulfa based antibiotic), Toradol (a nonsteroidal anti-inflammatory agent), Vistaryl for nausea, and whirlpool bath treatments.

4.18 By 0900, the initial nurse assessment in the IPU again recounted the report of rectal pain, skin excoriations over most of Ricardo's body including his lower legs, and rectal area. His skin was open, draining, and purple. Two and half hours later, at 11:20 am, Ricardo had a rapid respiratory rate. One half hour later, the medical staff placed Ricardo in a whirlpool. His blood pressure plummeted to 87/42 with a pulse of 141. He reported shortness of breath and

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dizziness. Finally, Mr. Moore recommended transfer to St. Mary's Medical Center, which did not occur until 1300 hours.

4.19 St. Mary's found him severely ill with sepsis and shock, and suffering a serious infection near his rectum and in his throat. The Hospital diagnosed Ricardo as suffering perianal cellulitis, proctitis, sepsis, shock, necrotizing bilateral tonsillitis, and ulcerative colitis. Medical providers there concluded he needed more specialized treatment than they could provide. He was transported by fixed wing aircraft to Sacred Heart Hospital in Spokane at 18:45.

4.20 When Ricardo arrived at Providence Sacred Heart Medical Center in Spokane, the medical team immediately treated him and took him into the operating room where they conducted extensive surgery to treat his severe perirectal infection. The team diagnosed him with septic shock, Fournier's gangrene, a perirectal abscess, respiratory failure, hypoxia, acute renal failure, disseminated intravascular coagulation, and ulcerative colitis. He was started on three antibiotics, levophed, nor epinephrine to support his blood pressure, and steroids.

4.21 To save his life, they were forced to cut away large portions of his buttock and rectum. But despite these heroic measures, the surgeons could not save the life of Ricardo Mejia.

January 16

4.22 Ricardo Mejia died at 2:02 a.m.

4.23 An autopsy found the cause of death to be sepsis and septic shock due to necrotizing fasciitis/Fournier's gangrene, a severe form of infection of the tissues near the rectum. The State, which arranged for and paid for the autopsy, failed to request photographs of Ricardo Mejia.

Fourniers Gangrene

4.24 "Fourniers Gangrene is an infection of the genitalia where the genital area (scrotum or perineum and penis) experience severe pain and develops from erythema to necrosis of the tissues."http://medicalpicturesinfo.com/fourniers-gangrene/. "In this disorder, the

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bacterial infection spreads rapidly from the urinary tract or abdominal, perianal or retroperitoneal areas which is often followed up by trauma." *Id.*

Necrotizing Fasciitis

4.25 "Flesh eating disease or flesh eating bacteria is a rare yet serious bacterial infection of the deep skin layers that begin in the subcutaneous tissues and spreads along the flat fascial layers of tissue, separating different layers of soft tissue, like muscle and fat." http://medicalpicturesinfo.com/?s=necrotizing.

Sepsis

4.26 Sepsis is a response to blood poisoning from infection. It is "a potentially life-threatening complication of an infection. Sepsis occurs when chemicals released into the bloodstream to fight the infection trigger inflammation throughout the body. This inflammation can trigger a cascade of changes that can damage multiple organ systems, causing them to fail." http://www.mayoclinic.com/print/sepsis/DS01004. "If sepsis progresses to septic shock, blood pressure drops dramatically, which may lead to death." *Id.*

Defendants Violated the Standard of Care

4.27 The prison medical staff caused Ricardo's death by repeatedly ignoring obvious symptoms of an infection and failing to take rudimentary steps to treat Ricardo, including:

4.27.1 As early as January 10, when Ricardo reported that he had been unable to eat for three days, he demonstrated orthostatic blood pressure changes and a resting tachycardia, both signs of dehydration, and he should have received both further evaluation including laboratory studies and treatment with IV fluids.

4.27.2 He should have had follow-up evaluation including vital signs on January 11 and 12.

4.27.3 On January 13, still complaining of a sore throat and now with new perianal lesions no vital signs were obtained.

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4.27.4 On January 14, with worsening symptoms and new abdominal pain, Ricardo was again given only topical treatment despite what appeared to be a large and expanding area of perirectal ulceration.

4.27.5 Early in the morning of January 15, with pain described as 8/10, a pulse of 154 and blistered and red buttocks, Ricardo Mejia was advised to wait and go to medical in the morning.

4.27.6 At 0730 his blood pressure had dropped to 102/53 and his pulse was 137, and he had an increased respiratory rate all signs of sepsis. He could not sit without pain and was restless. This should have prompted further evaluation including evaluation for infection.

4.27.7 At 0845 he was evaluated and treated for a cellulitis with trimethoprim-sulfa. This antibiotic used as monotherapy is not appropriate for the empiric treatment of cellulitis, especially cellulitis in the perirectal region of an individual with a history of untreated ulcerative colitis, abdominal pain, and who is now on steroids.

4.27.8 Just 15 minutes later the nursing note indicates that the perirectal skin is open, draining and purple in color. These findings are consistent with tissue necrosis and present a medical emergency.

4.27.9 At 1115, Ricardo was now in septic shock. He was hypotensive with a blood pressure of 87/42 and a pulse of 141, dizzy and short of breath. A couple hours later, Defendants called to transfer to St. Mary's Medical Center in Walla Walla where he arrived at 1410, over three hours later.

4.27.10 By repeatedly failing to evaluate and treat Ricardo Mejia's symptoms and signs, to enter into differential diagnoses of these symptoms and signs, and to refer him to other practitioners for diagnosis and treatment of these symptoms and signs. This included failures to consider an allergy to sulfasalazine which led to six weeks of allergic symptoms and discomfort for

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Ricardo Mejia, and failure to promptly diagnose and treat his perirectal infection which directly lead to consequences of septic shock, multiorgan failure and death.

4.27.11 Recognizing the symptoms of an infection exhibited by Ricardo on January 11, 2011 required only basic health care skills and knowledge; it is "Medicine 101."

4.28 Ricardo Mejia would have survived, and with full function, had simple laboratory evaluations been obtained and appropriate medical care been provided on January 10 when he was orthostatic, tachycardic, and had not eaten in three days, followed by appropriate medical care. Timely diagnosis and treatment by his medical providers at the Department of Corrections would have spared his life, would have preserved his functioning, and would have relieved him from suffering undue and severe pain.

Department of Health Findings of Systemic Failures

4.29 As a direct result of Ricardo's death, the Department of Health conducted an investigation of the health care program at the Washington State Penitentiary in Walla Walla. The DOH found multiple serious systemic violations as of 2011.

4.30 Upon completing its program investigation on May 16, 2011, the DOH found that WSP "did not provide a formalized process for continuity of care and supervision of Care" which "may result in inappropriate and unsafe care." Specifically, the DOH findings stated: "DOC did not have P&P's which outline how the medical director provides supervision of midlevel providers," which was done only "informally and occurred usually during the utilization process." In other words, there was no regular supervision of Mr. Moore by his sponsoring physician, Defendant Dr. James Edwards.

4.31 Second, the DOH found that "the facility did not have a formalized process for midlevel providers to discuss complex medical cases with the medical director and did not have formalized process to refer complex cases from the midlevel provider to the medical director."

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In other words, the Medical Director and the State failed to put in place processes directing Mr. Moore how and when to seek help from a medical doctor in a case like Ricardo Mejia's, leaving Mr. Moore to conclude that it was not important to do so.

4.32 Third, "there was no formalized process for the primary care provider to report offender medical issues to on call staff" and the other way around, meaning the facility took no steps to ensure that Mr. Moore and the nurses communicated to each other the needs of their patients. The failure to implement such a protocol reinforced Mr. Moore's apparent belief that he could refuse to see Ricardo Mejia on January 14, 2011 while on call because he felt it was inconvenient. And it facilitated the repeated failure of the medical providers during the period January 10 through January 15, 2011 to actively take charge of Ricardo Mejia's alarming deterioration. This problem is illustrated by Dr. Kellogg's claim that no one told him that Ricardo Mejia was suffering rectal pain or was allergic to sulfasalazine.

4.33 Fourth, "Nursing staff did not consistently obtain offenders vital signs and/or call the on-call provider for advice when [Ricardo Mejia's] vital signs were outside the range of normal.... Very few vital signs were documented within the medical record when nursing and midlevel providers evaluated the offender." The Findings also noted, "On 12/30/10, 1/9/11 and 1/15/11, a nurse evaluated [Ricardo Mejia] but did not call the on-call provider for advice."

4.33.1 These findings reflect a frequent, almost routine disregard for medical protocols that exist to ensure prisoners receive proper medical care. Ricardo Mejia "was seen by a health care provider approximately 35 times while at this facility" yet "Vital signs were taken and documented approximately 12 times"—merely one-third of the time.

4.33.2 Indeed, "On 1/15/11 the nurse evaluated [Ricardo Mejia] and documented [his] heart rate as 154, but made an appointment for [Ricardo Mejia] to be seen in the clinic 3 hours later."

4.33.3 So, even when nurses took vital signs of Ricardo Mejia, Mr. Moore and the medical staff ignored the plain significance of them: when faced with an emergency they responded with a notable lack of urgency.

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4.34 Fifth, "the facility failed to ensure staff were fully trained and/or competent to provide offender care," which results in inadequate and unsafe care. The DOH found specifically, "The facility did not ensure staff were oriented to the DOC Health Care Record Document and did not perform chart audits to ensure staff were following the documentation requirements." In a review of Ricardo Mejia's medical file, the DOH found, "Very few, if any, encounters were documented [SOAP] format" and "many staff had not documented all details of the offender encounter." Indeed, "This form was not completed for [Ricardo Mejia's] admission to the IPU on 1/15/11." In other words, the medical staff omitted from his contemporaneous records many perhaps crucial facts and aspects of Ricardo Mejia's interactions with his care providers, interfering with the continuity of his care and failing to create an accurate record of his condition, what he reported about it, what information his care providers obtained and learned, and their responses.

4.35 Sixth, WSP failed "to ensure a process requiring the midlevel provider to contact the medical director when the midlevel provider admitted an offender to the inpatient unit (IPU)." Had WSP implemented this process, Medical Director Dr. Edwards would have been informed of Ricardo Mejia's admittance five hours before Ricardo was finally transferred to St. Mary's Hospital. These were precious hours during which Dr. Edwards could have given immediate direction to send Mr. Mejia for emergency treatment, saving his life.

4.36 Seventh, the DOH found even more deficiencies that may have contributed to substandard care of Ricardo Mejia.

DOH is Pursuing Disciplinary Charges against PA Moore

4.37 As a direct result of Ricardo's death, the Medical Quality Assurance Commission investigated the lack of adequate treatment Mr. Moore provided to Ricardo in the days leading to his death. After investigating, the DOH filed a Statement of Charges against Mr. Moore (dated April 29, 2013), alleging that his care amounted to "incompetence, negligence, or malpractice…." The charges are pending.

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4.38 The Charges acknowledge that, at a minimum, "By January 14, 2011, Patient A's ongoing complaints and physical signs strongly indicated that worsening of his ulcerative colitis—a life threatening condition—was the cause of the signs and symptoms, but Respondent's [Mr. Moore's] actions indicate that he did not recognize this." Likewise, the Charges state that "A call was placed to [Mr. Moore] and he initiated another medication order, but he did not take immediate action to examine the patient and did not notify his physician sponsor despite Patient A's [Ricardo Mejia's] complex presentation."

4.39 Further, the Charges state that "[Mr. Moore] was later contacted during the night shift due to escalating concerns and made arrangements to examine [Ricardo Mejia] in the morning on January 15, 2011." In short, The Department of Health has already concluded that Mr. Moore's repeated failure to take appropriate action fell below the standard of care on January 14.

4.40 The Charges also relate that on the morning of January 15, Vickie Holevinski, RN, "recognized that [Ricardo Mejia] was exhibiting physical signs of sepsis, including low blood pressure, elevated respiration and heart rates, and restlessness." Mr. Moore does not contest these facts. When "[Mr. Moore] arrived shortly after 0800 hours and examined [Ricardo Mejia]," he "discussed with [Ricardo Mejia] administering antibiotics and Toradol for pain." Mr. Moore does not contest these facts either.

4.41 When "Nurse Holevinski voiced concern that [Ricardo Mejia] might be septic and that he was not sufficiently stable to return to his unit," "[Mr. Moore] reacted angrily at the nurse's attempt to intervene, refused to admit [Ricardo Mejia] to the inpatient clinic, and left the outpatient clinic without provider orders." This was mere hours before Ricardo died after trips to two hospitals emergency rooms, a flight to Spokane, and heroic measures on the operating table. When the nurse "contacted [Mr. Moore] soon afterwards because she had no orders" "[Mr. Moore] relented to admit [Ricardo Mejia] to the inpatient clinic."

4.42 Continuing his delay in treating Mr. Mejia, the Charges reflect that Mr. Moore did not issue medication orders for another twenty minutes. And although Mr. Moore's "inpatient

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assessment for [Ricardo Mejia] notes his history of ulcerative colitis," Mr. Moore "diagnoses cellulitis." Mr. Moore does not contest these facts.

4.43 The DOH Charges understatedly conclude: "[Mr. Moore] failed to recognize the acuity of the situation or the seriousness of [Ricardo Mejia's] condition. According to [Mr. Moore's] assessment, 'I anticipate this inmate will improve over next few days and be able to return to housing in G unit.'" But instead, the Charges acknowledge, "[Ricardo Mejia], however, was septic with a necrotizing skin infection."

4.44 The Charges also conclude that more than five (5) hours after Mr. Moore examined Ricardo Mejia that morning, "At approximately 1315 hours WSP medical staff requested that [Ricardo Mejia] be transported by ambulance to St. Mary Medical Center where he was admitted at approximately 1415 hours." "[Mr. Moore] did not notify his sponsor physician regarding [Ricardo Mejia's] condition until after the transfer." Mr. Moore does not contest these facts.

4.45 Notes from the Department of Health reflect the gravity of Mr. Moore's culpable state of mind as well as the predictable results: "RNs talking to PA → He ignored them. Obvious disaster." "RN and supervising Doc all think he missed it."

4.46 Although the DOH did not press charges against the physicians, the DOH's systemic findings of inadequate protocols and lack of supervision by Dr. Edwards show his culpability: "No MD around. PA didn't consult." "Sick for 4-6 days. PA only person treating. Could go Dangerous to devastating in 48-72 hrs. No MD review?? Docs may not see pt unless asked." "Supervising MD statement. 137 pulse raises significant concern."

4.47 Dr. Kellogg's failure to properly diagnose and treat Ricardo Mejia on January 11, 2011, reveal that the medical care he provided fell below the standard of care.

Evidence of Deliberate Indifference

4.48 The Department of Health findings of systemic deficiencies in the health care practices evince deliberate indifference. The Defendants and their medical staff were all aware of the basic requirements but repeatedly ignored them, and the Defendants responsible for

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supervising and implementing policies, procedures, and implementing practices failed to set up effective methods of ensuring compliance despite known risks, which caused Ricardo Mejia's pain, suffering, and death.

4.49 Before the Defendants mistreated Mr. Mejia, the Department of Corrections had been sued for failing to conduct diagnostic tests, administer antibiotics, and timely diagnose another prisoner's rectal infection leading to necrotizing fasciitis and septic shock. In 2008, in *Manning v. State*, C07-5420 FDB (W.D. Wa. 2007), a medical expert filed a declaration explaining to the Court in that case as well as to the DOC: "Failure to treat a perirectal abscess may lead to Fournier's Gangrene. Fournier's Gangrene is the terminal point in the infectious process, when the perirectal abscess bursts, and the fascial borders are broken. Necrotizing infection begins to rapidly spread." Dkt. 30 ¶14. In the wake of the *Manning* litigation, DOC officials failed to provide timely and effective training and supervision on how avoid these same errors again evincing deliberate indifference.

4.50 Pat Rima, who is the DOC Director of Nursing Services, was the Health Care Administrator (HCA) at Washington State Penitentiary for eight years. During this time, she was the Department's Project Manager on Mr. Moore's contract beginning in 2009—two years before Mr. Moore provided inadequate medical care for Ricardo Mejia. In an interview with the DOH, she admitted that "At times" Mr. Moore "was on the edge with his care decisions." And she remarked that "he gave the minimum care with the least effort." The DOC plainly had doubts about the adequacy Mr. Moore's medical treatment so Ms. Rima sensibly did not renew Mr. Moore's contract. But Ms. Rima's replacement as Health Care Manager, Defendant Kyle King hired Moore back. Ms. Rima "was Kyle's boss at the time, and he ran this by her prior to making his decision. [Ms. Rima] counseled Kyle not to hire him, but Kyle and Dr. Edwards decided to hire him again." Dr. Edwards has acknowledged he was aware that "RN Rima fired" Mr. Moore.

4.51 The State and Defendant Kyle King ignored Ms. Rima's admonition against rehiring Mr. Moore. And there is no evidence that the Defendant DOC or Defendant King took

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meaningful steps to re-train Mr. Moore, improve his attitude and judgment, and better supervise him. When interviewed, Mr. Moore's supervisor, Facility Medical Director Dr. Edwards, acknowledged that Moore "tends not to listen to nurses." That, of course, was borne out by the distain he showed when nurses advocated for him to see, and then admit, Mr. Mejia to the Penitentiary Inpatient Unit and to treat what they saw as serious symptoms. Dr. Edward's admission that he was aware of Mr. Moore's disregard for nurses is evidence of deliberate indifference.

4.52 The predictable outcome of these poor choices was inadequate medical care causing serious injury to prisoners and, as in Mr. Mejia's case, death. Indeed, although Mr. Moore purportedly improved his conduct for a short period *after* Mr. Mejia's death, Ms. Rima stated that she "has seen this cycle before and knows it will happen again. She advised Kyle to fire [Mr. Moore] because it's just a matter of time." Mr. Mejia's life was in the balance when Defendants ignored the notice they had of Mr. Moore's substandard care—that was deliberate indifference.

4.53 PA Moore repeatedly showed a dismissive attitude toward Ricardo Mejia's reports of need for medical treatment, such as on January 14, 2011, when he was "on call" but nevertheless instructed the nurse that he was unavailable because he was at an eye appointment so to tell Mr. Mejia to come in the next day. And, this together with his unprofessional and rude rejection of Nurse Holevinski's strong recommendations urging that Ricardo be admitted in-patient because he was showing signs of sepsis was deliberate indifference, as Mr. Moore walked off the Inpatient Unit without providing orders. And they are revealing of his casual attitude toward the treatment of Ricardo throughout the tragedy. Indeed, on January 15, 2011 while Ricardo Mejia was in medical crisis, after finally admitting Ricardo to the Inpatient Unit, Mr. Moore simply left the facility. Even the extremely belated transfer of Ricardo to St. Mary's Hospital was handled as "non-emergent."

4.54 This is reinforced by Dr. Edwards' admissions of multiple failures by Moore: (1) "Due to the resting pulse of 140 at the appearance of [Ricardo Mejia's] infected area, at a

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minimum, I would have admitted the patient to the IPU or sent him to the emergency room;" (2) "Further it is my belief that additional tests should have been ordered if the decision was made to retain the patient in the IPU," and(3) "that I, as his supervisor, should have been contacted for consultation." Mr. Moore took none of these basic steps, and in combination with his angry and petulant response to Nurse Holevinski's efforts to convince him to provide care, Mr. Moore's failures were deliberately indifferent.

4.55 Dr. Edwards maintained a periodic log about Mr. Moore. Nothing positive was noted. Dr. Edwards wrote, as of about the summer of 2009, "I have kept hearing more reports from various sources re: Ken. They mainly regard – not doing much work, being unhelpful, being unpleasant when asked to help." By January 7, 2010, "continued neg reports. Several nurses have told me he was unhelpful, didn't do much work, and was unpleasant in the way he dealt with them." Dr. Edwards recounted that Mr. Moore repeatedly issued orders without ever examining the patients who came to see him. He also described Mr. Moore's patient volumes as "significantly lower" than his colleagues, yet refused to see a patient who another provider then admitted to the Inpatient Unit. Dr. Edwards further remarked, "There are multiple nurses that say Ken is very unhelpful and they don't even want to have to ask him for help. They say he just sits back in the office and Glenn and Julie and Shirlee, etc pick up the extra work. When they do ask him for help, he often doesn't want to help, they say." Dr. Edwards then noted that Mr. Moore did not want the job in the first place.

4.56 In writing about Mr. Moore's failure to treat Ricardo Mejia, a member of the DOH's panel wrote, "He seems to have the knowledge, but is just not interested."

4.57 In a letter dated January 15, 2011 to Dr. Edwards, Allison Oleson, RN, reported a very troubling interaction she had with Ken Moore about Ricardo Mejia, while Mr. Moore was "on call." She reported that she called Mr. Moore at about 2:30 pm about "oral and anal thrush" and an allergic reaction when Ricardo "was clearly in distress" with an elevated pulse (106) and blood pressure (151/83). Mr. Moore "immediately asked me why this kid was sick 'at this time of day—instead of earlier.'" He then suggested that "maybe this kid should wait until tomorrow,

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like 'we' would have to do if we were at 'our' Dr's office." Nurse Oleson told Mr. Moore, "the kid should be admitted." Instead, Mr. Moore instructed her to have the pm nurse call him about the issue when she arrives. Nurse Oleson then reported, "this inmate WAS NOT admitted." (Capitals in original). Instead, "He was given Viscous Lido" and "never was seen by Ken [Moore]."

4.58 Nurse Oleson then relayed, Nurse "Vicki Holevinski apparently had about as much success convincing Ken that this kid was sick too. I know that you will hear from her." Nurse Oleson then wrote that Ricardo was finally admitted the next day: "Vickie feels that this kid could be septic/I knew that [Ricardo Mejia] was quite ill yesterday and my pleas fell on deaf ears." She concluded her candid appraisal to the Medical Director: "I cannot believe that this kid didn't get better treatment than this… I went home last night quite undone by Ken's disregard…."

4.59 The next day, Nurse Holevinski wrote a similar letter reporting more of the same disturbing behavior by PA Moore. She reported that after Ricardo arrived in a wheelchair at 07:45 am, she "had concerns about an increased heart rate of 137-140 and increased respirations of 24" and he "was very restless, which alerted me to some underlying concerns of possibly sepsis." But when Mr. Moore assessed Ricardo, the physician's assistant merely discussed "possible Toradol injection for pain and p.o. doxycycline due to patient's allergy to other antibiotics (erythromycin and penicillin), and sending him back to his unit."

4.60 Despite Nurse Holevinski's attempt to convince PA Moore that "I felt that this patient needed to be on the inpatient unit, and I was concerned about the symptoms that he was having," PA Moore dismissively remarked: "We don't put patients on the inpatient unit for the convenience of the provider" and then he walked away. Only after Nurse Holevinski persisted twice more did PA Moore relent and admit Mr. Mejia to the inpatient unit. She was so concerned about PA Moore's conduct that she "called the Duty Officer, Alan Baily, RN3, and discussed the events that had taken place with this patient and the provider and my concern."

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4.61 Then, Nurse Holevinski reported to an RN in the inpatient unit that the patient "had not received any medication at this time and we had no orders because PA Moore wanted to wait until the patient got to the inpatient unit." Nurse Holevinski also wrote that she reported her concerns about Ricardo's medical condition to yet another RN "and asked her to please watch him carefully because of my concerns that his condition could deteriorate quickly." Nurses continued to inquire about treating Ricardo Mejia but they remarked that "Ken wouldn't give us an order," to which Mr. Moore flippantly confirmed: "I guess I didn't."

4.62 Nurse Holevinski was interviewed by the Department of Health as part of its investigation into Mr. Moore's misconduct. She had this to say about Mr. Moore—which is strong evidence of indifference: when Ricardo Mejia was admitted to the Inpatient Unit she thought "he was septic and could go south in a hurry" yet "Mr. Moore was sitting there, allowing the patient to wait 45 minutes while no treatment orders or medication was given."

4.63 Nurse Holevinski stated that she "thinks that [Ricardo Mejia] should have gone to the hospital at 0730 hours. She thinks the standard of care was not met in this case by the PC-C Respondent [Moore]. She states: I don't trust the guy. He avoids seeing patients. He's not a good provider. I don't want to work with him. He's dangerous." And, she reports that Mr. Moore "mis-diagnoses patients, intimidates nurses and downplays the patients' clinical presentation." She described several examples of his refusal and failure to provide needed care to prisoners. There are likely others as well.

4.64 On January 11, 2011, Dr. Kellogg personally examined Ricardo Mejia yet he did not dictate or write progress notes stating what he found or recommended. Despite the fact that the medical record for that date reflects Ricardo reported rectal pain, oral pain, vomiting, and pain throughout his body, Dr. Kellogg wrote to the Department of Health after the fact that Ricardo was in "no acute distress." His minimizing Ricardo's known medical condition and suffering is evidence of deliberate indifference.

4.65 Further, on January 11, 2011, Mr. Mejia "presented with a rash for which he'd been seen multiple times," which "was attributed to an allergic reaction to sulfasalazine" but

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Dr. Kellogg did not discontinue that medication. He says he ordered strep and mono tests, which reveals that he recognized Ricardo was suffering from an infection yet he did not treat the infection and he ordered steroids, which tend to impair the body's immunity. And he did not try to determine whether Mr. Mejia suffered any risk factors to an infection or compromised immunity, like ulcerative colitis. Nor did he direct that Ricardo Mejia return the following day (January 12—when no one examined Mr. Mejia) to be checked on. And for his own failures to inquire, diagnose, and treat—which reflect indifference—Dr. Kellogg seemingly chalks this up to his choice to conduct only a brief exam and blames Defendant ARNP Neisner for not drawing his attention to the other medical issues.

4.66 All acts and omissions alleged in this Complaint against the Defendants occurred within the scope of the Defendants' official duties and were under color of state law.

V. DAMAGES

5.1 As a direct and proximate result of the acts, omissions, practices, and conduct of Defendants and their agents, Plaintiffs have sustained damages in the form of pain and suffering, emotional distress, loss of relationship, love, affection, care, service, companionship, society, training, and consortium, and other special and general damages to be proven at trial.

5.2 Ricardo Mejia suffered severe pain over a prolonged period culminating in excruciating pain at the top of the scale throughout the last day of his life. At 4:30 in the morning of January 15th—nearly 24 hours before he died—the medical records reflect he reported pain at 8 on a scale of 1 to 10. The pain in his rectum only spread and got worse as he rotted alive while in the custody of the Jail.

5.3 In the ensuing hours, Ricardo also suffered difficulty breathing, dehydration, dizziness, renal failure, and more than one cardiac arrest. During all this time, Ricardo Mejia was conscious and aware. He answered his providers' questions and the records reflect that his providers explained his predicament to him—that he needed help badly because he was in grave danger of dying. At St. Mary's Hospital in Walla Walla, he approved being transported to Spokane because he needed a higher level of care. At Sacred Heart Hospital, he likewise

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answered questions and then suffered a heart attack. And then doctors in the Hospital had to take heroic measures cutting deep into his body and removing large sections of his buttock and rectum to save his life: "He had large amounts of buttock tissue removed by Dr. McNevin. This was a last ditch effort to control his sepsis since we knew that without surgery he had absolutely no chance of living. Unfortunately, even after removing large chunks of tissue he remained extremely acidotic, hypoxic and hypotensive." After surgery, they resuscitated him. But diagnosed with "Overwhelming sepsis and septic shock," he was pronounced dead at 2:02 am, January 16, 2011.

5.4 Necrotizing fasciitis is a destructive infection of the deep tissues including muscle, blood vessels, fascia and nerve tissue. It is an extremely painful process. One of the hallmark symptoms and indicators of necrotizing fasciitis is pain that is disproportionate to the visible wound, redness, blisters, swelling, or fever. From at least January 11, 2011 until his death on January 16, 2011, Mr. Mejia suffered progressively severe to excruciating pain.

VI. CAUSES OF ACTION

6.1 By the above-described acts and omissions Defendants violated Washington law, including but not limited to RCW 7.70 and common law negligence standards, and the Eighth and Fourteenth Amendments to the United States Constitutions through 42 U.S.C. §1983.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests relief against Defendant State of Washington as follows:

7.1 Special damages in an amount to be proven at trial;

7.2 General damages for loss of enjoyment of life, pain and suffering, mental anguish, emotional distress;

7.3 Reasonable attorney's fees and costs;

7.4 Declaratory and injunctive relief;

7.5 Leave to conform the pleadings to the evidence presented at trial; and

7.6 Further and additional relief that the court deems just and equitable.

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VIII. DEMAND FOR JURY

8.1 Plaintiffs demand that their case be tried before a jury.

DATED this 20th day of December, 2013.

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