

## NEWS

# New Mexico Corrections Department pays \$1.4 million to settle whistleblower case

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Oct. 18, 2020, 10:54 a.m. MT

The state Corrections Department spent three years and about \$270,000 fighting a whistleblower lawsuit filed by one of its highest-ranking employees before paying her \$1.4 million in March to drop her complaint, according to recently released public records.

"My case is a perfect example of why whistleblowers need to be protected," Bianca McDermott said Thursday. "But the biggest tragedy in my eyes is that nothing really has changed."

McDermott, a clinical psychologist with a doctorate from Yale, was the Corrections Department's behavioral health bureau chief for 13 years before she was fired in 2016 over a personnel dispute, which she said was retaliation for raising concerns about the quality of the medical care being provided to prisoners.

McDermott said at the time she had seen firsthand poor care being provided by Corizon Correctional Health Care, then known as CMS, and she began alerting corrections officials about the problems as early as 2009 following the unusually high number of inmate deaths the year before.

In early 2017, she filed a whistleblower lawsuit saying she was fired for reporting the department was not auditing the performance of the health care provider to which it paid tens of millions of dollars each year to deliver inmate medical care.

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Over the next couple of years, the department paid a private attorney about \$270,000 to fight the case. A judge in September 2019 ruled that not only had the Corrections

Department retaliated against McDermott for reporting the problem, but the department had willfully and intentionally concealed evidence in the case, including its own 2014 report that corroborated her complaints.

"Dr. McDermott's complaints that the audits were required and were not being conducted were in fact valid complaints," according to the report, obtained through a public records request. "The audits were supposed to be conducted to ensure that inmates were receiving adequate health care."

"It is a well studied conclusion that perception of detection is the best and most cost effective way to thwart wrongdoing of all kinds, including fraud and abuse," the report said. "In this case, the perception of detection was zero, and Corizon personnel absolutely knew they were free to do anything without fear of consequences.

"This constitutes a serious failure by (New Mexico Corrections Department) staff whose job it was to ensure proper inmate health and psychiatric care through the use of the audits and other tools, as well as a failure on the part of those who supervised them," the report said.

Since-retired state District Judge Raymond Ortiz in September 2019 said the department's behavior in the case was among the worst he'd seen in his 30-plus-year career.

The department subsequently agreed to pay McDermott \$1.4 million to drop her complaint. The settlement was paid in March, but the state General Services Department withheld the details until Oct. 13, citing a since-modified state law that allowed settlements to be kept confidential for 180 days.

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The decisions surrounding the lawsuit were made by the previous administration, Corrections Department spokesman Eric Harrison said in an email Wednesday. "Our agency does not tolerate retaliation of any kind, and our leadership understands the importance of transparency," he wrote.

But records obtained by *The New Mexican* show that more than half the roughly \$270,000 the state agency spent fighting the case was expended after Secretary Alisha Tafoya Lucero took office in May 2019.

The department replaced Corizon with another vendor in 2016 and replaced that vendor with the current vendor in 2019, citing concerns about the quality of care delivered.

"The Corrections Department just keeps changing vendors," McDermott said. "All of the private prison care vendors are for-profit companies. All of them have lost contracts and been kicked out of states for poor services.

"The only way to improve the quality of medical care for our prison inmates is to audit the medical vendor, even state law requires it. Otherwise, all you have is a continuing lack of services for prison inmate and basically millions of dollars being misspent by the Corrections Department on vendors that are not following their contractual obligations."

Harrison said Thursday the department audits the medical care vendor's performance once every fiscal year. But a steady stream of lawsuits continues to be filed in state District Court by inmates alleging denied, delayed or poor medical care.

The department spends about 15 percent of its roughly \$360 million annual budget on inmate medical care services, according to a 2019 state auditor's report.

McDermott said Thursday one of her greatest concerns is that the majority of inmates in the state prison system are Hispanics and Native Americans, who historically have been marginalized.

"At a time when we are talking so much about systemic racism and social justice, it's ironic that this particular population is being ignored," she said.