

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT**

**PRISON LEGAL NEWS, a project of the
HUMAN RIGHTS DEFENSE CENTER, individually
and on behalf of PRISON LEGAL
NEWS NEW MEXICO SUBSCRIBERS,**

Plaintiffs,

vs.

No.

**CORIZON HEALTH and GERRIE
BECKER, PROCUREMENT SPECIALIST
FOR THE STATE OF NEW MEXICO,**

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT UNDER THE
NEW MEXICO CONSTITUTION AND TO
ENFORCE THE INSPECTION OF PUBLIC RECORDS ACT,
FOR PRODUCTION OF PUBLIC RECORDS,
AND FOR DAMAGES, COSTS, AND ATTORNEYS' FEES**

INTRODUCTION¹

Our lawmakers wisely recognize that an informed electorate is integral to a functional democracy. To ensure an informed electorate, all persons are entitled to the greatest possible information concerning the management and operation of government affairs. Public records are the principal means by which the people and the media monitor those affairs, and their right to access them is protected both by state law and the state constitution. When the state contracts with private companies to stand in its shoes, those companies must also comply with this state's public records laws and constitution. The people of the State of New Mexico and the press do not contract away their right to inspect government records when the state hires private

¹ This introduction summarizes the facts asserted herein and does not constitute a paragraph to which Defendants need respond. The enumerated paragraphs follow.

companies to satisfy its core functions, including corrections and the provision of medical services to the incarcerated.

Corrections serves one of the most quintessential government functions and inherently operates in the shadows: the liberty of inmates is severely curtailed, and they simply do not have platform or occasion to expose government abuses that they may witness. Prison Legal News, a non-profit project of the Human Rights Defense Center, strives to bring transparency to detention facility operations throughout the country by publishing an award winning, nationally-distributed monthly news magazine that reports on criminal justice and corrections-related issues. To do so, Prison Legal News is largely dependent upon the availability of public records.

In this case, Prison Legal News sought public records from Corizon Health regarding litigation, settlements, and verdicts related to its business activities on behalf of the New Mexico Corrections Department and, in turn, New Mexicans. Corizon Health is a private, for-profit corporation and the largest provider of correctional health services in the country. It only exists to fulfill the need for this constitutionally necessary government function and does so solely with government dollars and on government property. Indeed, New Mexicans indirectly pay Corizon Health tens of millions of dollars a year to provide medical services to inmates. Still, Corizon Health refuses to comply with this state's public records laws and has failed to provide Prison Legal News with records confirming allegations of misconduct against its New Mexico employees and related settlements and verdicts, claiming those details were confidential and/or the corporation had not retained the records.

Corizon Health cannot obscure its operations and refuse the press access to public records when it solely exists to serve a core government function, and the government cannot contract away its legal obligation to provide records related to the conduct of its core operations to

members of the press and the public who might request that information. Otherwise, New Mexicans would not be able to determine whether their tax dollars have been spent wisely or whether they need to petition the government for change.

COMES NOW Prison Legal News (“PLN”), by and through its attorneys, Laura Schauer Ives, Kennedy Kennedy & Ives, LLC, Lance Weber and Sabarish Neelakanta, Human Rights Defense Center, and brings this action to enforce the provisions of the Inspection of Public Records Act, NMSA 1978 § 14-2-1 *et seq.* (“IPRA”), including compelling Corizon Health (“Corizon”) to disclose the requested public records and for award of attorneys’ fees, damages, and costs. PLN further seeks declaration that 1) private corporations standing in the shoes of government are subject to IPRA, 2) that the State of New Mexico cannot contract away its lawful duties under IPRA, 3) that Article II, Section 17 of the New Mexico Constitution protects the liberty of the press and the coextensive right of the public to access information about the conduct of government affairs, and 4) apart from IPRA, under Article II, Section 17, private corporations performing public functions are constitutionally compelled to disclose public records to the press and public.

JURISDICTION, VENUE, AND PARTIES

1. This Court has jurisdiction of the subject matter of this action pursuant to the New Mexico Constitution, Art. VI, § 13 and NMSA 1978 § 38-3-1. This Court has personal jurisdiction over Plaintiff and Defendants.

2. Venue is proper in Santa Fe County, New Mexico, pursuant to NMSA 1978 Section 38-3-1(A) because PLN subscribers and Defendant Gerrie Becker may be found and/or reside in the judicial district.

3. Plaintiff PLN—a project of the Human Rights Defense Center—is a 501(c)(3) non-profit organization that publishes and distributes a monthly magazine that reports on criminal justice issues and prison and jail-related civil litigation, with an emphasis on prisoners’ rights. PLN has published continuously since 1990. New Mexican attorneys, inmates, and persons generally interested in criminal justice and prison and jail-related litigation subscribe to PLN. PLN is a registered trade name of the Human Rights Defense Center, a Washington state nonprofit organization and a person under IPRA. See NMSA 1978 § 14-2-6(C).

4. Defendant Corizon is a foreign corporation admitted to do business in New Mexico and designates and maintains a statutory agent who resides in Santa Fe County. Corizon is a resident of the State of Tennessee and is the largest provider of correctional medical services in the country.

5. As it is acting on behalf of the New Mexico Corrections Department (“NMCD”), Corizon is subject to the disclosure requirements of IPRA.

6. Gerrie Becker is a Procurement Specialist for the Purchasing Division of the State of New Mexico, who accepted the contract between Corizon and the State of New Mexico, he operates out of Santa Fe County and presumably accepted this contract in that county.

FACTUAL ALLEGATIONS

Corizon’s Contract with the State of New Mexico

7. On May 30, 2012, Corizon and the State of New Mexico entered into a contract, effective from June 1, 2012, through May 31, 2016, to provide inmate medical services in New Mexico state correctional facilities.

8. On information and belief, that contract covers Corizon’s operations in total and provides for substantial profit.

9. Pursuant to that contract, Corizon “must submit [to NMCD] a detailed statement accounting for all services performed and expenses incurred.”
10. In New Mexico, Corizon operates on property owned by the State of New Mexico.
11. NMCD must, pursuant to state and federal law, provide medical services to inmates whether it enters into a contract with a medical provider or not.
12. The contract between Corizon and the State of New Mexico, approved and accepted by Procurement Specialist Gerrie Becker, did not explicitly require Corizon to maintain and disclose public records pursuant to IPRA.

PLN’S Request for Public Records and Corizon’s Refusal to Disclose

13. On September 1, 2015, PLN sent a public records request for settlement agreements and other documents related to cases in which Corizon paid damages and/or attorney’s fees in cases arising in New Mexico, New Mexico state and federal court rulings issuing injunctive or declaratory judgments against Corizon, and any spreadsheets, summaries, lists or similar database print-outs listing all litigation/claims concluded against Corizon, all from January 1, 2010, to September 1, 2015. See September 1, 2015 Correspondence from PLN to Corizon Health Corporate Office, attached as Exhibit 1.
14. Corizon accepted PLN’s request through certified mail on September 8, 2015. See United States Post Office Tracking Receipt, attached as Exhibit 2.
15. On September 28, 2015, Corizon, through counsel, denied PLN’s request in whole for the following reasons:
 - a. “Information regarding litigation or claims in which Corizon Health or any of its subsidiaries has paid \$1,000 or more in damages and/or attorney fees to a claimant, plaintiff or petitioner are protected by contractually binding confidentiality provisions included in settlement agreements negotiated [by] the parties, which prohibit disclosure of the amount of settlement, and in some cases, the identities of the claimant, plaintiff or petitioner.”

- b. “Corizon Health does not have copies of any verdict forms associated with any claims, complaints or amended complaints filed in any New Mexico court since January 1, 2010. The remaining information requested is again protected by contractually binding confidentiality provisions that were included in settlement agreements negotiated by the parties, which prohibit disclosure of the amount of settlement, and in some cases, the identities of the claimant, plaintiff or petitioner.”
- c. “Corizon Health is not in possession of any New Mexico state or federal court rulings issuing injunctive or declaratory judgments against Corizon, [from] January 1, 2010 through the date of your request.”
- d. “Corizon Health is not in possession of any New Mexico state or federal court rulings in which a court held Corizon, its counsel, or any Corizon employee in contempt of court, and/or issued sanctions against Corizon, its counsel or any Corizon employee, from January 1, 2010 through the date of your request.”
- e. “Information regarding litigation or claims in which Corizon Health or any of its subsidiaries has paid \$1000 or more in damages and/or attorney fees to a claimant, plaintiff or petitioner are protected by contractually binding confidentiality provisions included in settlement agreements negotiated by the parties, which prohibit disclosure of the amount of settlement and in some cases the identities of the claimant, plaintiff or petitioner.”

See September 28, 2015 Correspondence from Nicole M. Charlebois to Paul Wright, attached as Exhibit 3.

16. Since the September 28, 2015 letter from Corizon’s counsel, Corizon has not provided any documents responsive to PLN’s request nor made any such documents available for PLN’s inspection.

17. Corizon’s response indicates that some of the documents PLN requested are in its possession and others either never existed or were not retained as required by New Mexico law.

Causes of Action

- I. **Right of Access to Public Records pursuant to IPRA against Corizon and Gerrie Becker**
18. Paragraphs 1-17 are hereby incorporated by reference as if fully set forth herein.

19. PLN's September 1, 2015 request conformed with IPRA's requirements.
20. New Mexico recognizes "that a representative government is dependent upon an informed electorate...[and] all persons are entitled to the greatest possible information regarding the affairs of the government..." NMSA 1978 § 14-2-5.
21. And our Supreme Court has recognized, "IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve. The citizen's right to know is the rule and secrecy is the exception." Republican Party of New Mexico v. New Mexico Taxation and Revenue Dep't, 2012-NMSC-026, ¶ 7 (internal quotations and citations omitted).
22. The State of New Mexico cannot contract away its obligations under IPRA; and its contract with Corizon, executed by Gerrie Becker, should have ensured that Corizon complied with regulations regarding the maintenance of public records and IPRA.
23. Corizon is a "public body" as defined by IPRA, which includes "the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, agencies or entities created by the constitution or any branch of government that receives any public funding..." NMSA 1978 §14-2-6.
24. In providing medical services to New Mexico inmates, Corizon's operations in New Mexico are wholly funded by the State of New Mexico; on State of New Mexico property; fulfill a quintessential core governmental function that the State of New Mexico is constitutionally obligated to provide and would otherwise have to undertake; heavily monitored by the State of New Mexico; and serves to benefit persons in the custody of the NMCD. See State ex rel. Toomey v. City of Truth or Consequences, 2012-NMCA-104, ¶ 13.
25. As used in the IPRA, the term "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or

characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained. NMSA 1978 § 14-2-6.

26. The records PLN requested in its September 1, 2015 letter to Corizon are not exempted from disclosure under IPRA, statutory or regulatory exceptions, privileges adopted by the New Mexico Supreme Court, or grounded in the constitution.

27. Specifically, settlements involving public entities are not exempted under IPRA.

28. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. NMSA 1978 § 14-2-1B. (Amended by 2011, c. 134, s. 2, eff. 7/1/2011).

29. If any of the information is exempt, Corizon has made no attempt to disclose non-exempt public records in their possession.

30. In this matter, the public's right to access the public records sought by PLN outweighs any interest in confidentiality or claims of privilege for the specific request.

31. Corizon has not complied with its statutory obligation to comply with IPRA since at least September 28, 2015.

32. IPRA provides that the requester may be awarded damages when the failure to provide a timely explanation of a denial is determined to be unreasonable. NMSA 1978 § 14-2-11(C). The award of damages for failure to provide a timely explanation of a denial shall not exceed one hundred dollars (\$100) per day. Id.

33. Corizon's failure to maintain and/or make the responsive documents in its possession available for inspection is unlawful and unreasonable.

34. IPRA provides that the court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of IPRA. NMSA 1978 §14-2-12D.

35. IPRA provides that a district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of IPRA. NMSA 1978 § 14-2-12B. Accordingly, PLN seeks an Order from this court requiring Corizon to produce the public records sought by PLN within fifteen (15) days from the date of the Order of this court.

II. Freedom of the Press and Coextensive Right to Access Information concerning Governmental Affairs

36. Paragraphs 1-35 are hereby incorporated by reference as if fully set forth herein.

37. New Mexico's Constitution provides that "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." N.M. Const. Art. II, § 17. These protections are independent of, and provide more protection than, the limitations placed on the powers of states by the First Amendment to the United States Constitution.

38. As the medical provider for the New Mexico Correctional Department, Corizon is a state actor.

39. As a publisher of a nationally distributed magazine, PLN is the press.

40. PLN has standing to assert a claim for denial of access to public information on behalf of its subscribers.

41. The protection of the liberty of the press as stated in Article II, Section 17 of the New Mexico Constitution necessarily protects the right of the public to access information and private corporations performing public functions are constitutionally compelled to disclose public records to the press.

42. Corizon's denial of access to public records to PLN abridges PLN's speech and the coextensive right of its subscribers of access to information regarding government affairs.

43. Accordingly, Plaintiffs are entitled to declaratory and injunctive relief as requested in this Complaint.

Prayer for Relief

WHEREFORE, the Plaintiffs respectfully seek the following relief:

A. Order Corizon to produce all information, documents, reports and other materials relevant to PLN's records request of September 1, 2015, and for any and all other IPRA requests submitted to it within the two years immediately preceding the filing of this complaint.

B. Grant PLN a permanent injunction, directing Corizon to comply with all past and future public records requests in accordance with the terms of the IPRA.

C. Declare that private contractors, such as Corizon, are subject to the State of New Mexico's IPRA.

D. Declare that PLN has a constitutional right to public records under Art. II, Sec. 18 and that its subscribers have a coextensive right to access information concerning government affairs.

E. Declare that apart from IPRA and under Art. II, Sec. 18, the State of New Mexico cannot contract away its obligation to provide transparency to the press and the electorate who relies on the press for information.

F. Award damages, costs and reasonable attorneys' fees to PLN.

G. Grant such other and further relief as to the Court deems proper.

Respectfully Submitted,

KENNEDY KENNEDY & IVES, LLC

/s/ Laura Schauer Ives

Laura Schauer Ives
1000 2nd Street NW
Albuquerque, New Mexico 87102
(505) 244-1400; Fax (505) 244-1406

HUMAN RIGHTS DEFENSE CENTER

/s/ Lance Weber

Lance Weber, FL Bar # 104550*
Sabarish Neelakanta, FL Bar # 26623*
P.O. Box 1151
Lake Worth, FL 33460
(561) 360-2523; Fax (866) 735-7136

**Pro Hac Vice Applications to be filed*

Attorneys for Plaintiffs



Prison Legal News

DEDICATED TO PROTECTING HUMAN RIGHTS

www.humanrightsdefensecenter.org

www.prisonlegalnews.org

September 1, 2015

SENT VIA CERTIFIED MAIL
NO.70140150000229190373

Corizon
Attn: Corizon Health Corporate Office
103 Powell Court
Brentwood, TN 37027

RE: New Mexico Public Records Act Request

Dear Sir or Madam:

I am the editor of Prison Legal News (PLN). PLN is a nationally-distributed monthly news magazine that reports on criminal justice and corrections-related issues, and a project of the Human Rights Defense Center, a non-profit organization.

I am contacting you on PLN's behalf and pursuant to NMSA § 14-2-1 (1978), et seq., to request copies of the following public records from your company related to your company's operations in New Mexico, including but not limited to operations at the North East New Mexico Detention Facility, Penitentiary of New Mexico, Springer Correctional Center, Guadalupe Correctional Facility, Western New Mexico Correctional Facility, New Mexico Women's Correctional Facility, Central New Mexico Correctional Facility, Roswell Correctional Center, Lea County Correctional Facility, Southern New Mexico Correctional Facility, Dona Ana County Correctional Facility and El Paso County Detention Facility.

1) I am requesting a copy of the last complaint or amended complaint or written claim for all lawsuits or claims arising in New Mexico filed against Corizon or any of its subsidiaries (collectively, "Corizon"), in which Corizon paid \$1,000 (one thousand dollars) or more in damages and/or attorney fees to the claimant, plaintiff or petitioner. The requested records should include the names of the parties, the court filed in (if any), identifying court and case number, and the facts alleged therein. I am requesting all such responsive records from January 1, 2010 through and including the date of this request. With respect to claims, claims include matters that were resolved prior to suit being filed in which damages were paid by Corizon as set forth above, and include pre-litigation demand letters.

P.O. Box 1151, Lake Worth, FL 33460
Phone: 561-360-2523
Email: pwright@prisonlegalnews.org

2) I am requesting a copy of all verdict forms, general releases, claim payment forms and/or settlement agreements in which Corizon paid damages and/or attorney fees in each of the cases arising in New Mexico for which I have requested the complaint or claim as set forth above in request #1. These requested records should indicate the case or claim number, identity of the parties, and amount paid by Corizon to satisfy the judgment, settlement or claim, including attorney fees paid to the plaintiff, petitioner or claimant.

3) I am requesting a copy of all New Mexico state or federal court rulings issuing injunctive or declaratory judgments against Corizon, from January 1, 2010 through and including the date of this request.

4) I am requesting a copy of all New Mexico state or federal court rulings in which a court held Corizon, its counsel or any Corizon employee in contempt of court, and/or issued sanctions against Corizon, its counsel or any Corizon employee, from January 1, 2010 through and including the date of this request.

5) I am requesting a copy of all spreadsheets, summaries, lists or similar database print-outs that list all litigation/claims concluded against Corizon which resulted in the payment of monetary damages, sanctions and/or attorney fees of \$1,000 or more, from January 1, 2010 through and including the date of this request. These requested records should include the name of the parties, name and location of the court, case number, amount paid and the type of claim where available.

I request that the above-described public records be provided to me in electronic format if they exist in electronic format, pursuant to NMSA § 14-2-9(B). In the event that such documents are only available in hard copy format, I request an opportunity to inspect and copy the specific public records I select from the records identified above.

If this request encompasses information or records that Corizon claims are exempt from disclosure pursuant to any applicable statute or law, then please redact such information, as required by NMSA 1978, §14-2-1(B), from the document or record rather than withhold the entire document from disclosure. If you apply any redactions, please describe the redacted information and provide a basis for your claim that the redacted information is not subject to disclosure.

If you claim that any of the requested records are not a public record, or if you claim a privilege not to disclose any record, please describe the record(s) being withheld and state the basis for your claim of privilege or confidentiality. Please produce all public records for which you do not claim an exemption or privilege, as the above requests are segregable.

Note that PLN is a news media project of the Human Rights Defense Center, a non-profit organization, and that the records I am requesting are not for any profit-related or commercial purpose. Should there be any fees incurred related to the production of the public records I am requesting, I request a waiver of such fees.

Please respond to this records request within fifteen (15) days of receipt of same. Note that failure to respond to this records request within fifteen (15) days will be considered a denial of my public records request, and I will duly take appropriate action. If you need additional time in which to produce the requested records, please advise in writing so I may consider your request for an extension of time. Please contact me if this request does not describe all of the above-requested documents with sufficient specificity for you to make a reasonable response, and I will attempt to reformulate the request in a manner that meets your requirements. If you are not the custodian of the records I am requesting, please promptly forward this request to the custodian of the requested records and notify me accordingly. NMSA § 14-2-8(E).

Thank you for your time and attention in this matter. If you have any questions or require additional information, please contact me at pwright@prisonlegalnews.org or at (561) 360-2523.

I look forward to your reply.

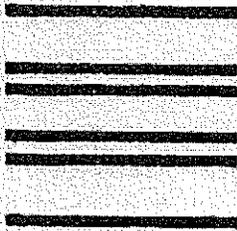
Sincerely,



Paul Wright
Editor, PLN
Executive Director, HRDC

PW/fs

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

Paul Wright, Executive Director

Human Rights Defense Center

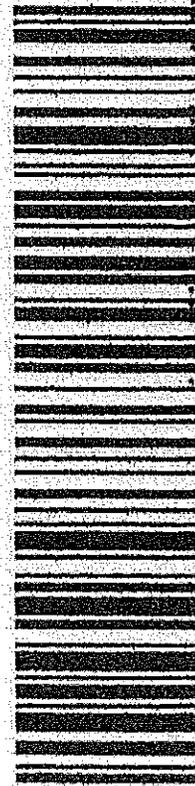
P.O. Box 1151

Lake Worth, FL 33460

RECEIVED

SEP 08 2015

USPS TRACKING#



9590 9403 0336 5155 2958 01



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corizon
Attn: Corizon Health Corporate Office
103 Powell Court
Brentwood, TN 37027



9590 9403 0336 5155 2958 81

2 Article Number / Tracking Number

7014 0150 0002 2919 0373

COMPLETE THIS SECTION ON DELIVERY

A. Signature



Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

CHAPMAN AND CHARLEBOIS, P.C.
Attorneys-At-Law

September 28, 2015

VIA EMAIL TO: pwright@prisonlegalnews.org

Paul Wright
Prison Legal News
P.O. Box 1151
Lake Worth, FL 33460

Re: New Mexico Public Records Act Request

Dear Mr. Wright:

Our office has been retained by Corizon Health to respond to your September 1, 2015, New Mexico Public Records Act request. This letter will serve as Corizon Health's response to your request.

Having reviewed your request and the parameters set out therein, we are unable to provide the requested documents for the following reasons:

Request 1 - Information regarding litigation or claims in which Corizon Health or any of its subsidiaries has paid \$1,000 or more in damages and/or attorney fees to a claimant, plaintiff or petitioner are protected by contractually binding confidentiality provisions included in settlement agreements negotiated the parties, which prohibit disclosure of the amount of settlement, and in some cases, the identities of the claimant, plaintiff or petitioner.

Request 2 – Corizon Health does not have copies of any verdict forms associated with any claims, complaints or amended complaints filed in any New Mexico court since January 1, 2010. The remaining information requested is again protected by contractually binding confidentiality provisions that were included in settlement agreements negotiated by the parties, which prohibit disclosure of the amount of settlement, and in some cases, the identifies of the claimant, plaintiff or petitioner.

Mailing Address:

P. O. Box 92438
Albuquerque, NM 87199
(505) 242-6000 (tel)

www.cclawnm.com

Physical Address:

4100 Osuna NE, Suite 2-203
Albuquerque, NM 87109
(505) 213-0561 (fax)

Paul Wright
September 28, 2015
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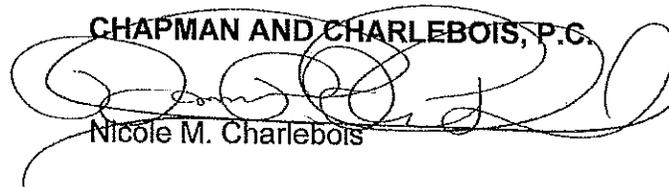
Request 3 – Corizon Health is not in possession of any New Mexico state or federal court rulings issuing injunctive or declaratory judgments against Corizon, [from] January 1, 2010 through the date of your request.

Request 4 – Corizon Health is not in possession of any New Mexico state or federal court rulings in which a court held Corizon, its counsel, or any Corizon employee in contempt of court, and/or issued sanctions against Corizon, its counsel or any Corizon employee, from January 1, 2010 through the date of your request.

Request 5 - Information regarding litigation or claims in which Corizon Health or any of its subsidiaries has paid \$1,000 or more in damages and/or attorney fees to a claimant, plaintiff or petitioner are protected by contractually binding confidentiality provisions included in settlement agreements negotiated by the parties, which prohibit disclosure of the amount of settlement and in some cases the identities of the claimant, plaintiff or petitioner.

Please do not hesitate to contact us should you have any questions or concerns regarding this information.

Sincerely,

CHAPMAN AND CHARLEBOIS, P.C.

Nicole M. Charlebois

Cc: Sabarish P. Neelakanta, (sneelakanta@hrdc-law.org)

NMC:kjm
045-1335