Official Publication of the State Bar of New Mexico

Bar Bulletin

March 28, 2018 • Volume 57, No. 13

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STATE BAR of NEW MEXICO

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About Cover Image and Artist: In her four decade career Bette Ridgeway has exhibited her work globally with more than 80 museums, universities and galleries, including Palais Royale, Paris and Embassy of Madagascar. Multiple prestigious awards include Top 60 Contemporary Masters, Leonardo DaVinci Prize and Oxford University Alumni Prize at Chianciano Art Museum, Tuscany, Italy. Mayo Clinic and Federal Reserve Bank are amongst Ridgeway's permanent public placements, in addition to countless important private collections. Many books and publications have featured her work, among them: International Contemporary Masters and 100 Famous Contemporary Artists. Ridgeway has also penned several books about her art and process.

Notices

Court News

New Mexico Supreme Court Judicial Standards Commission

Seeking Commentary on Proposed Amended Rules

The Commission has completed a comprehensive review and revision of its procedural rules. Commentary on the proposed amendments is requested from the bench, bar and public. The deadline for public commentary has been extended to May 18. To be fully considered by the Commission, comments must be received by that date and may be sent either by email to rules@nmjsc.org or by mail to Judicial Standards Commission, PO Box 27248, Albuquerque, NM 87125-7248. To download a copy of the proposed amended rules, visit nmjsc.org/recent-news/.

Second Judicial District Court

Destruction of Tapes

Pursuant to the judicial records retention and disposition schedules, the Second Judicial District Court will destroy tapes of proceedings associated with the following civil and criminal cases:

1. d-202-CV-1992-00001 through d-202-CV-1992-11403
2. d-202-CV-1993-00001 through d-202-CV-1993-11714
3. d-202-CV-1994-00001 through d-202-CV-1994-10849
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10. d-202-CR-1986-40951 through d-202-CR-1986-42576

Attorneys who have cases with proceedings on tape and wish to have duplicates made should verify tape information with the Special Services Division 505-841-7401 from 10 a.m.–2 p.m., Monday through Friday. Aforementioned tapes will be destroyed after March 31.

Professionalism Tip

With respect to my clients:

I will advise my client against tactics that will delay resolution or which harass or drain the financial resources of the opposing party.

Tenth Judicial District Court

Destruction of Exhibits

The Tenth Judicial District court County of Quay will destroy exhibits in domestic relations cases for years 1979-2013. Exhibits may be retrieved through April 30 by calling 575-641-4422.

U.S. District Court for the District of New Mexico

U.S. Magistrate Judge Vacancy

The Judicial Conference of the United States has authorized the appointment of a part-time United States Magistrate Judge for the District of New Mexico at Roswell, New Mexico. This authorization is contingent upon the appointment of incumbent Magistrate Judge Joel Carson as a circuit judge to the U.S. Tenth Circuit Court of Appeals. The current annual salary of the position is $56,607 effective April 1 commensurate with the annual caseload for this position. The term of office is four years. The U.S. magistrate judge application form and the full public notice with application instructions are available on the Court's website at www.nmd.uscourts.gov or by calling 575-528-1439. Applications must be submitted no later than April 3.

U.S. Bankruptcy Court District of New Mexico

New Location and Phone Numbers

Effective Feb. 20 the Bankruptcy Court is at a new location: Pete V. Domenici U.S. Courthouse, 333 Lomas Boulevard NW, Suite 360, Albuquerque, NM 87102. The Bankruptcy Court customer service counter is located on the third floor of the Lomas Courthouse. Bankruptcy courtrooms and hearing rooms are located on the fifth floor of the courthouse. All Bankruptcy Court phone numbers have changed as part of this move. The new main line phone number is 505-415-7999. Note that 341 meeting locations did not change as part of the Bankruptcy Court relocation.

State Bar News

Attorney Support Groups

- April 2, 5:30 p.m.
  First United Methodist Church, 4th and Lead SW, Albuquerque (Group meets the first Monday of the month.)
- April 9, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets on the second Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- April 16, 5:30 p.m.
  UNM School of Law, 1117 Stanford NE, Albuquerque, King Room in the Law Library (Group meets the third Monday of the month.) Teleconference participation is available. Dial 1-866-640-4044 and enter code 7976003#.

For more information, contact Latisha Frederick at 505-948-5023 or 505-453-9030 or Bill Stratvert at 505-242-6845.

Public Law Section

Accepting Award Nominations

The Public Law Section is accepting nominations for the Public Lawyer of the Year Award, which will be presented at the state capitol at 4 p.m. on April 27. Visit www.nmbar.org/publiclaw to view previous recipients and award criteria. Nominations are due no later than 5 p.m. on April 9. Send nominations to Section Chair Chris Melendrez at cmelendrez@cabq.gov. The selection committee will consider all nominated candidates and may nominate candidates on its own.

UNM School of Law

Law Library Hours

Through May 12

Building and Circulation

Monday–Thursday	8 a.m.–8 p.m.
Friday	8 a.m.–6 p.m.
Saturday	10 a.m.–6 p.m.
Sunday	noon–6 p.m.

Reference

Monday–Friday	9 a.m.–6 p.m.

2018–2019 Bench & Bar Directory

Update Your Contact Information by March 30

To verify your current information: www.nmbar.org/FindAnAttorney

To submit changes (must be made in writing):
Online: Visit www.nmbar.org > for Members > Change of Address
Mail: Address Changes, PO Box 92860, Albuquerque, NM 87199-2860
Fax: 505-828-3765
Email: address@nmbar.org

Publication is not guaranteed for information submitted after March 30.

Other Bars

Albuquerque Bar Association

Legislative Preview with Dick Minzner

Dick Minzner will present "Legislative Update" (1.0 G) at the Albuquerque Bar Association's next membership luncheon at noon on April 3 at the Hyatt Regency Albuquerque. Lunch will be from 11:30 a.m.–noon. The cost is $30 for members and $40 for non-members. Register online at www.abqbar.org.

American Bar Association Commission on Lawyer Assistance Programs

Law Student Wellness Twitter Chat

Students face myriad issues and stressors as they transition both into law school and ultimately from law school into the profession. Some students will seek assistance when issues and pressures mount, while others will attempt to go it alone. This national Twitter Chat aims to encourage students to seek help when they need it, by addressing questions around stigma, bar application character and fitness, and anything else on the minds of students and those who care about them. Join the chat by searching #LawStudentWellness on Twitter from 1–2 p.m. ET on March 28. For more information, visit ambar.org/lawstudentwellness.

Albuquerque Lawyers Club

Monthly Lunch Meeting

The Albuquerque Lawyers Club invites members of the legal community to its April meeting. Dr. Sam Roll will present "Joy: A Guide for Attorneys." The lunch meeting will be held at noon, April 4, at Seasons Restaurant, located at 2031 Mountain Road. It is free to members/$30 non-members in advance/$35 at the door. For more information, please email ydennig@yahoo.com or call 505-844-3558.

New Mexico Criminal Defense Lawyers Association

Trial Skills College

NMCDLA's Trial Skills College returns this year with some new features including forensic pathology fellows who will act as experts during the cross and direct examination segments, as well as a new case file on eyewitness ID. It is approved for 15 general hours of CLE credit. This is a great opportunity to develop skills in every aspect of trial—for new and seasoned practitioners alike. From jury selection to closing arguments, participants work with some of the best trial attorneys in the state as faculty, dedicated to helping you step up your trial game. This 2+ day hands-on workshop begins the evening of April 5 through April 7. It is limited to 36 participants, with some spots open to civil practice attorneys as well. Visit nmcdla.org to register by March 23.

New Mexico Defense Lawyers Association

Save the Date - Women in the Courtroom VII CLE Seminar

The New Mexico Defense Lawyers Association proudly presents Part VII of "Women in the Courtroom," a dynamic seminar designed for New Mexico lawyers. Join us at the Jewish Community Center of Greater Albuquerque for this year's full-day CLE seminar. Registration will be available online at nmdla.org in July. For more information contact nmdefense@nmdla.org.

New Mexico Women's Bar Association

2018 Henrietta Pettijohn Reception

The New Mexico Women's Bar Association invites members of the legal profession to attend its annual Henrietta Pettijohn Reception Honoring the Honorable Sharon Walton. The 2018 Supporting Women in the Law Award will be presented to Little, Gilman-Tepper & Batley, PA. The Exemplary Service Award will be presented to Sarita Nair and the Outstanding Young Attorney Award will be presented to Emma O'Sullivan. The reception will be 6–9:30 p.m., May 10, Hyatt Regency Albuquerque. Tickets are $25 for law students, $50 for members, $60 for non-members. Contact Libby Radosevich, eradosevich@peiferlaw.com to purchase tickets and sponsorships.

Other News

Center for Civic Values

Pecos High School Seeks Mock Trial Team Coach

Pecos High School is looking for an attorney coach for their Mock Trial team during the 2018-2019 school year. Pecos High School is a small school with a population of less than 200, but with a group of eager and talented students with a passion for competing in the Mock Trial competition. The team has been complimented on their professionalism and natural talent the last couple years at competition. The difference-maker for the team could be having an attorney coach that could help take the team to the next level. Contact teacher coach Spencer Faunt at 503-740-2084 to help lead our team to success in next year's competition.

Call for Nominations

2018 STATE BAR OF NEW MEXICO *Annual Awards*

Nominations are being accepted for the **2018 State Bar of New Mexico Annual Awards** to recognize those who have distinguished themselves or who have made exemplary contributions to the State Bar or legal profession in 2017 or 2018. The awards will be presented during the 2018 Annual Meeting, Aug. 9-11 at the Hyatt Regency Tamaya Resort, Santa Ana Pueblo. All awards are limited to one recipient per year, whether living or deceased. Previous recipients for the past three years are listed below. To view the full list of previous recipients, visit **www.nmbar.org/Awards**.

{ Distinguished Bar Service Award–Lawyer }

Recognizes attorneys who have provided valuable service and contributions to the legal profession and the State Bar of New Mexico over a significant period of time.

Previous recipients: *Scott M. Curtis, Hannah B. Best, Jeffrey H. Albright*

{ Distinguished Bar Service Award–Nonlawyer }

Recognizes nonlawyers who have provided valuable service and contributions to the legal profession over a significant period of time.

Previous recipients: *Cathy Ansheles, Tina L. Kelbe, Kim Posich*

{ Justice Pamela B. Minzner* Professionalism Award }

Recognizes attorneys or judges who, over long and distinguished legal careers, have by their ethical and personal conduct exemplified for their fellow attorneys the epitome of professionalism.

Previous recipients: *Hon. Elizabeth E. Whitefield, Arturo L. Jaramillo, S. Thomas Overstreet*

*Known for her fervent and unyielding commitment to professionalism, Justice Minzner (1943–2007) served on the New Mexico Supreme Court from 1994–2007.

{ Outstanding Legal Organization or Program Award }

Recognizes outstanding or extraordinary law-related organizations or programs that serve the legal profession and the public.

Previous recipients: *Young Lawyers Division Wills for Heroes Program, Self Help Center at the Third Judicial District Court, Pegasus Legal Services for Children*

{ Outstanding Young Lawyer of the Year Award }

Awarded to attorneys who have, during the formative stages of their legal careers by their ethical and personal conduct, exemplified for their fellow attorneys the epitome of professionalism; nominee has demonstrated commitment to clients' causes and to public service, enhancing the image of the legal profession in the eyes of the public; nominee must have practiced no more than five years or must be no more than 36 years of age.

Previous recipients: *Spencer L. Edelman, Denise M. Chanez, Tania S. Silva*

{ Robert H. LaFollette* Pro Bono Award }

Presented to an attorney who has made an exemplary contribution of time and effort, without compensation, to provide legal assistance over his or her career to people who could not afford the assistance of an attorney.

Previous recipients: *Stephen. C. M. Long, Billy K. Burgett, Robert M. Bristol*

*Robert LaFollette (1900–1977), director of Legal Aid to the Poor, was a champion of the underprivileged who, through countless volunteer hours and personal generosity and sacrifice, was the consummate humanitarian and philanthropist.

{ Seth D. Montgomery* Distinguished Judicial Service Award }

Recognizes judges who have distinguished themselves through long and exemplary service on the bench and who have significantly advanced the administration of justice or improved the relations between the bench and the bar; generally given to judges who have or soon will be retiring.

Previous recipients: *Hon. Michael D. Bustamante, Justice Richard C. Bosson, Hon. Cynthia A. Fry*

*Justice Montgomery (1937–1998), a brilliant and widely respected attorney and jurist, served on the New Mexico Supreme Court from 1989–1994.

A letter of nomination for each nominee should be sent to Kris Becker, State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860; fax 505-828-3765; or email kbecker@nmbar.org. Please note that we will be preparing a video on the award recipients which will be presented at the awards reception, so please provide names and contact information for three or four individuals who would be willing to participate in the video project in the nomination letter.

Deadline for Nominations: June 1

For more information or questions, please contact Kris Becker at 505-797-6038.

STATE BAR of NEW MEXICO

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective March 16, 2018

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

A-1-CA-35532	State v. J Chavez	Affirm	03/12/2018
A-1-CA-35983	State v. S Paris	Affirm	03/13/2018
A-1-CA-35049	Bowers Electric v. D Davide	Affirm	03/15/2018
A-1-CA-35976	State v. L Kolek	Affirm	03/15/2018
A-1-CA-36659	State v. R Salazar	Affirm/Dismiss	03/15/2018

Slip Opinions for Published Opinions may be read on the Court's website:
http://coa.nmcourts.gov/documents/index.htm

Celebrating PRO BONO Appreciation Day and Volunteers

By Aja Brooks, Volunteer Attorney Program

New Mexico Legal Aid's Volunteer Attorney Program held its Third Annual Appreciation Luncheon and Awards Ceremony at the State Bar Center in Albuquerque on Feb. 13. Attorneys, judges, volunteers and others assembled to celebrate those in the community who have done outstanding pro bono work in 2017. Albuquerque Mayor Tim Keller was the keynote speaker and presented the Volunteer Attorney Program with a proclamation declaring Feb. 13, 2018, as Pro Bono Appreciation Day. The following awards were given:

Cristina Chávez—*2017 VAP Attorney of the Year Award*
Sanders, Bruin, Coll & Worley, PA—*Law Firm of the Year Award*
The Eighth Judicial District Court Pro Bono Committee—*Pro Bono Committee of the Year Award*
Joanne Trujillo and Marilyn Coulson—*Non-Attorney Volunteer of the Year Award*
Evan Hobbs—*Go the Distance Award*
Elizabeth Vasquez and Robert Koeblitz—*Shining Star Award*
Barbara Koenig and Barry Kane—*Show No Fear Award*
Modrall Sperling Law Firm and Rodey Law Firm—*Special Awards*

The mission of the VAP is to expand and support an active statewide network of volunteer attorneys, paralegals and law students to meet the civil justice needs of low-income New Mexicans in all communities throughout the state. The Volunteer Attorney Program would like to thank all of its volunteers for their contributions of time and effort to pro bono. VAP would also like to extend a special thank you to the State Bar of New Mexico, Mayor Keller's Office, Mujeres en Acción and our musicians (Lisa Nichols, Vic Romanelli, Micky Patten and Will Hanley) for their assistance.

For more photos of the luncheon provided by the Volunteer Attorney Program, visit **www.nmbar.org/Photos**.

Volunteer Attorney Program
A Program of New Mexico Legal Aid

Tomas J. Garcia has been slected to recieve the "HNBA TOP Lawyers Under 40". Garcia is an associate at Modrall Sperling in Albuquerque, NM. He practices in commercial, healthcare, torts/personal injury, and transportation litigation. Garcia is immediate past chair of the State Bar of New Mexico Young Lawyers Division, and a member of the Diversity and Inclusion Committee of the ABA's Litigation Section. His J.D. from Georgetown University Law Center.

Modrall Sperling is pleased to welcome **Stan N. Harris** and **Tiffany Roach Martin** as members of the firm's executive committee. **Stan Harris** is a shareholder with Modrall Sperling and has 20 years of litigation experience. He is a member of the Natural Resources and Environment group and practices in the areas of public lands, natural resources and commercial litigation. Harris received his Juris Doctor from the University of New Mexico School Of Law. **Tiffany Roach Martin** is a shareholder at Modrall Sperling and maintains an active and diverse civil litigation practice. Her practice focuses on commercial litigation, products liability, mass torts, personal injury, wrongful death, unfair trade practices, insurance, health care, trusts and estates, and employment. She received her Juris Doctor from Baylor University Law School, where she graduated *cum laude* in 2007.

Denise M. Chanez, an attorney with the Rodey Law Firm, will be honored by the Mexican American Law Student Association at its 22nd Annual Fighting for Justice Banquet on April 14. Chanez, a director in the Rodey Law Firm, practices primarily in the areas of long term care and medical malpractice. Chanez is a past president and current board member of the New Mexico Hispanic Bar Association. She also co-chairs the State Bar of New Mexico's Committee on Diversity in the Legal Profession.

Nicholas J. Trost, a former insurance defense lawyer, has joined Parnall Law's growing legal team. Trost attended the University of Washington in Seattle and graduated magna cum laude. Upon graduation, Trost attended the University of New Mexico School of Law, and graduated cum laude.

Atkinson & Kelsey, P.A. is proud to announce that Virginia R. Dugan, Jon Feder and Thomas Montoya were selected for inclusion in *2018 Super Lawyers*.

Sutin, Thayer & Browne, is changing at the top for the first time in 18 years. **Benjamin E. Thomas** has been elected president and chief executive officer of the firm. Thomas, 40, joined Sutin, Thayer & Browne in 2003, practicing primarily in commercial litigation with a focus on employment law and banking/financial law. Thomas attended Vanderbilt University (bachelor's degree, 1999) and Boston University (J.D., 2003; master's degree in international relations, 2004). **Jay D. Rosenblum,** president and CEO since 2000, becomes the firm's chairman of the board of directors and resumes his corporate law practice full time. Rosenblum grew up in Albuquerque, attended college at UNM and UNM School of Law, and joined Sutin, Thayer & Browne upon law school graduation in 1982. These changes took effect Jan. 1.

Attorneys Attain Emeritus Status

John Taichert Feldman, James Michael Osborn and **Carol Skiba** recently became the first three members of the State Bar of New Mexico to be approved as emeritus attorneys by the New Mexico. Supreme Court under Rule 24-111 NMRA. Under this rule, approved voluntary withdrawn or inactive attorneys may participate in an emeritus pro bono program in association with an approved legal aid organization, without any compensation, and under the supervision of an attorney. Feldman, Osborn and Skiba say that the rule incentivized them to transfer to inactive status and provide pro bono legal services after retirement.

This new designation will allow Feldman and Osborn to continue their current work for the N.M. Immigrant Law Center. **John Feldman** (UNM SOL, Class of '89) was a professor at UNM Law School at the time of his retirement. Feldman is a long-time mediator. Feldman is also the leader of the Curio Cowboys Western Swing Band. **Mike Osborn** (UNM SOL, Class of '08) retired as a gifted education teacher and counselor before attending law school. Osborn returned to education, working with several charter schools and helping to coordinate the APS Mediation in the Schools program. Osborn also served as an adjunct in ADR classes at UNM SOL.**Carol Skiba** earned her B.A. at Boston College and her J.D. at Suffolk University Law School. She is admitted to practice law in New Mexico (emeritus status) and is on retired status with the Massachusetts State Bar. She retired from her position as executive director for the Board of Bar Examiners in 2015 after more than 20 years of service. She has volunteered with New Mexico Legal Aid's Volunteer Attorney Program since 2016.

John D. Watson of Las Cruces, born Dec. 23, 1953, died Feb. 14. A loving father and family man, John and Karen celebrated 16 years of marriage. Watson was born in Plainview, Texas, son of Savern (Bud) and Gene Watson of Santa Fe, N.M. Watson was a graduate of Pojoaque High School and served honorably in the U. S. Navy and was a Vietnam War Veteran. Watson graduated from the University of New Mexico Law School. Watson began his practice in 1988 with civil law primarily focusing on matters relating to families. Watson received the Outstanding Contribution Award from the State Bar of New Mexico for his work in the field of domestic violence for three non-consecutive years; Watson also co-authored a book on domestic violence. Watson was a member of the board of directors for the Family Law Section of the State Bar of New Mexico. Then, from 2008 through 2016 he was a commissioner on the NM Supreme Court Commission for Access to Justice. Watson's time in Vietnam and his work as an attorney shaped him. Watson was a very thoughtful, considerate, kind and gentle man. Watson was always doing small things for people to make them feel special. Watson cared for everyone around him, including his six other siblings as they grew up. Anyone who had a chance to know or meet Watson had his or her life impacted. Not only did he show his appreciation and humor to those close to him but also he was a mentor in schools and in his local community. Watson was a craftsman and enjoyed working with wood, a master puzzle maker. Those left to mourn his death include beloved wife Karen Watson of Las Cruces, daughters Claudia of Lewiston, Maine, Michelle and husband Jon of Rainier, Ore., Naomi and husband Jake of Fort Worth, Texas and Lacy and husband Ben of Truth or Consequences, N.M., his loving mother Gene Watson of Santa Fe, his brothers, Liam Watson of Santa Fe, Stefan Watson and his wife Eileen of Albuquerque, Michael Watson and his wife Kay of San Diego, Calif., His sisters, Mary Watson and partner Kelly Richerson of El Rancho, and Rachel Watson and her husband Rick of Santa Fe. Other survivors include seven grandchildren, nineteen nieces and nephews, and cousins.

Devoted husband, father, grandfather, great-grandfather **Rozier Edmund Sanchez** died Dec. 22, 2017. Born in Socorro, N.M., in 1931, Judge Sanchez attended Mt. Carmel E. S., and Socorro H. S. for one year, before transferring to St Mary's H.S. in Phoenix where he played the trumpet in a dance band. He then attended Loyola University, Los Angeles, Calif., on a music scholarship and graduated with a Bachelor of Science in Political Science in 1954. Judge Sanchez served in U.S. Air Force 1954-1957 and retired as a Major in U. S. Air Force Reserves. In 1959 he graduated from Georgetown University Law Center, Washington, D.C., receiving a Bachelor of Law and then a Master of Law. After 13 years in private practice, he served as a Second Judicial District Court Judge for 20 years. Judicial accomplishments include the establishment of civil commitment hearing procedures for the mentally ill at the University of New Mexico Hospital, establishment of the court clinic for criminal and domestic relations evaluations. He spearheaded the creation of a domestic relations division in the Second Judicial District and was instrumental in the establishment of a comprehensive judicial education program and obtaining federal and state funding for the Court Clinic and Judicial Education programs. Judicial activities also included chairman of the Judicial Education and Training Advisory Committee 1991 to 2013; member New Mexico Judicial Standards Commission l988-93; chairman of the Southwest Judicial Conference Committee 1985, 1988; chairman of the New Mexico Judicial Conclave Committee 1983-92; Federal Land Commission. Awards have included Outstanding Judge Award by Albuquerque Bar Association for "outstanding contribution made to his profession" (1990); Distinguished Judicial Service Award presented by State Bar of New Mexico (1993) for his "long and exemplary service to the citizens of New Mexico"; State Bar of New Mexico Outstanding Contribution Award (1994); American Bar Association Judicial Education Award (1997); State Bar of New Mexico Professionalism Award (2000); NM Distinguished Public Service Award (2002); Outstanding Family in Philanthropy (2007); Justice Seth Montgomery Distinguished Judicial Service Award (2014). He was further honored by having the Judicial Education Center at UNM named the Rozier E. Sanchez Judicial Education Center. Judge Sanchez also received the La Hispanidad 500 Years of Hispanic Achievement Award for Outstanding Hispanic Achievement (1992) and the Hispanic National Bar Association Medal "for Commitment to the Preservation of Civil and Constitutional Rights for All Americans" (1988 and 1998). Community activities include: 46 years as a member and officer of Sandia Civitan Club, former president of the Archdiocese of Santa Fe Board of Education, former member Board of Directors of Boy Scouts of America, past president of Annunciation Parish Council and Holy Name Society, former member and officer of the Family Counseling Service, former Archdiocese of Santa Fe lay delegate to New Mexico Inter-Church Agency and City of Albuquerque Open Space Volunteer. Judge Rozier Sanchez is survived by the love of his life, married for 61 years, Victoria. Five children: Mary Sanchez-Lanier (Glen) and their children Michael (Meladi), Suzanne Sheehe (David), Sarah; Carol Johansen (Jim) and Rachel, Christopher; Robert (Heather) and Patrick, Nicolas; Catherine Praiswater (Michael); Linda Vigil (Ramon) and Carmen; and 2 great-grandsons Maximus Glen Sheehe and Grant Rozier Lanier. His parents Julius and Priscilla Fortune Sanchez predeceased him as well as his brother Archbishop Robert Fortune Sanchez.

Legal Education

March

28 **Structuring For-Profit/Non-Profit Joint Ventures**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

28 **Cybersleuth: Conducting Effective Internet Research (2017)**
4.0 G, 2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **The Ethics of Using Lawyer Advertisements Using Social Media (2017)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Attorney vs. Judicial Discipline (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Human Trafficking (2016)**
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

28 **Everything You Need to Know About Breastfeeding Law: Rights and Accommodations**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

29 **Convincing the Jury: Trial Presentation Methods and Issue**
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

29 **Abuse and Neglect Case in Children's Court**
3.0 G
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

29 **Basic Guide to Appeals for Busy Trial Lawyers**
3.0 G
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

30 **What's the Dirtiest Word in Ethics?**
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org

30 **Speaking to Win: The Art of Effective Speaking for Lawyers**
5.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

April

3 **Drafting Employment Agreements, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

4 **Drafting Employment Agreements, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

5 **Veterans Disability Law Bootcamp**
4.7 G
Live Seminar, Albuquerque
Vet Defender
www.lawyershelpingwarriors.com

5-7 **Trial Skills College**
15.0 G
Live Seminar,
Albuquerque
New Mexico Criminal Defense Lawyers Assocaition
www.nmcdla.org

6 **2017 Business Law Institute**
5.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

6 **2017 Health Law Symposium**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

6 **Uncovering and Navigating Blind Spots Before They Become Land Mines (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

6 **Deposition Practice in Federal Cases (2016)**
2.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

6 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
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10 **Closely Held Stock Options, Restricted Stock, Etc.**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

12 **Domestic Self-Settled Trusts**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

14 **Please add Fourth Annual Symposium on Diversity and Inclusion Diversity Issues Ripped from the Headlines, II**
3.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

17 **Protecting Client Trade Secrets & Know How from Departing Employees**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

18 **Equipment Leases: Drafting & UCC Article 2A Issues**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

19 **Advanced Mediation**
10.2 G
Live Seminar, Santa Fe
David Levin and Barbara Kazen
505-463-1354

20 **Ethically Managing Your Practice (2017 Ethicspalooza)**
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

20 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

24 **Drafting Ground Leases, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

25 **Drafting Ground Leases, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Defined Value Clauses: Drafting & Avoiding Red Flags**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

26 **Oil and Gas: From the Basics to In-Depth Topics (2017)**
6.0 G, 1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Ethics for Government Attorneys (2017)**
2.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Add a Little Fiction to Your Legal Writing (2017)**
2.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

26 **Complying with the Disciplinary Board Rule 17-204**
1.0 EP
Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org

27 **Lawyer Ethics in Real Estate Practice**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

27 **Legal Rights and Issues Affecting Pregnant and Parenting Teens in New Mexico**
1.0 G
Live Seminar, Albuquerque
Southwest Women's Law Center
swwomenslaw.org

May

1 **The Law of Consignments: How Selling Goods for Others Works**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

2 **Valuation of Closely Held Companies**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

8 **Ownership of Ideas Created on the Job**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

9 **2018 Trust Litigation Update**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

11 **How Ethics Rules Apply to Lawyers Outside of Law Practice**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

15 **Reps and Warranties in Business Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.nmbar.org

Listings in the Bar Bulletin *CLE Calendar are derived from course provider submissions. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@nmbar.org. Include course title, credits, location, course provider and registration instructions.*

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

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CLERK'S CERTIFICATE OF WITHDRAWAL

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Recent Rule-Making Activity

As Updated by the Clerk of the New Mexico Supreme Court

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Effective March 28, 2018

Pending Proposed Rule Changes Open for Comment:

Comment Deadline

Please see the special summary of proposed rule amendments published in the March 21, 2018, issue of the Bar Bulletin. The actual text of the proposed rule amendments can be viewed on the Supreme Court's website at the address noted below. The comment deadline for those proposed rule amendments is April 11, 2018.

Recently Approved Rule Changes Since Release of 2018 NMRA:

		Effective Date
Rules of Civil Procedure for the District Courts		
1-088.1	Peremptory excusal of a district judge; recusal; procedure for exercising	03/01/2018

To view all pending proposed rule changes (comment period open or closed), visit the New Mexico Supreme Court's website at http://nmsupremecourt.nmcourts.gov. To view recently approved rule changes, visit the New Mexico Compilation Commission's website at http://www.nmcompcomm.us.

Before the Disciplinary Board of the Supreme Court of the State of New Mexico

In the Matter of Shannon G. Pettus, Esq.

Disciplinary No. 07-2017-766

An Attorney Licensed to Practice Law before the Courts of the State of New Mexico

Formal Reprimand

You are being issued this Formal Reprimand pursuant to the *Conditional Agreement Admitting the Allegations and Consent to Discipline* which was approved by both a Hearing Committee and a Disciplinary Board Panel.

Your misconduct arose from your representation when you were a fairly new lawyer of a client as the plaintiff in a personal injury lawsuit, an area of law in which you were not competent. Your client was alleged to have fallen in a hospital and was not helped for some time. You did not consult with any attorney experienced in the field, a consultation that may have prevented the problems that led to this Formal Reprimand.

First, you failed to obtain the medical records of your client prior to filing suit. As a matter of competence, a lawyer who is considering suing on behalf of a client for damages arising from a personal injury would first need to obtain all medical records if for no other reason than to determine whether the injury was documented and what expenses the client has incurred or is likely to incur.

Next, you failed to timely respond to the first set of defendant's discovery requests, and then when you did, the responses were inadequate. Defense counsel then filed a motion to compel. Your response to the motion was due over a month before you actually filed it.

Then the Court granted the motion to compel, and gave your client two weeks to respond; you failed to comply on behalf of your client. Accordingly, defense counsel filed a motion to dismiss based on the non-compliance; you did not file a response until well beyond the deadline.

Nor did you attend the hearing on the motion to dismiss; you claim you made a calendaring error, but you took no corrective action when the Court's office called you. The Court granted the *Motion to Dismiss*, with prejudice.

As you admit, your conduct violated the following Rules of Professional Conduct: Rule 16-101, by failing to provide competent representation to your client; Rule 16-103, by failing to represent your client diligently; Rule 16-302, by failing to expedite litigation; and Rule 16-804(D), by engaging in conduct that was prejudicial to the administration of justice.

We hope that through publication of this formal reprimand in the *Bar Bulletin*, new lawyers on their own will heed the lesson that you have learned - that a lawyer inexperienced in a certain area of law either should decline to take a case in that area, or should associate or consult with other lawyers who are experienced in that practice area.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. The formal reprimand will be filed with the Supreme Court in accordance with 17-206(D), and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 17-206(D), the entire text of this formal reprimand will be published in the State Bar of New Mexico *Bar Bulletin*. You also agreed to and have paid costs to the Disciplinary Board in the amount of $310.10.

Dated March 16, 2018
The Disciplinary Board of the
New Mexico Supreme Court

By

Curtis R. Gurley, Esq.
Board Chair

Certiorari Denied, December 20, 2017, No. S-1-SC-36739

From the New Mexico Court of Appeals

Opinion Number: 2018-NMCA-011

No. A-1-CA-35219 (filed August 17, 2017)

JAIME MOLINAR,
Worker-Appellant,
v.
LARRY REETZ CONSTRUCTION, LTD.,
REETZ CONSTRUCTION, INC., and
BUILDERS TRUST OF NEW MEXICO,
Employer/Insurer-Appellees.

APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION
Reginald C. Woodard, Workers' Compensation Judge

M. SCOTT OWEN
BUTT THORNTON & BAEHR PC
Albuquerque, New Mexico
for Appellees

LEEANN ORTIZ
Albuquerque, New Mexico
for Appellant

Opinion

J. Miles Hanisee, Judge

{1} Worker Jaime Molinar appeals a decision of the Workers' Compensation Judge (WCJ) denying Worker's claim for permanent partial disability (PPD) and medical benefits based on the WCJ's finding that Worker's disability was not caused by his work-related accident. Worker argues that his work-related accident aggravated a preexisting condition, resulting in his PPD, thus entitling him to PPD and medical benefits, as well as mileage reimbursement for travel associated with his medical appointments. Worker also claims that the Workers' Compensation Administration (WCA) violated NMSA 1978, Section 52-1-54(M) (2013) of the Workers' Compensation Act (the Act) by paying Employer/Insurer attorney fees prior to the settlement or adjudication of Worker's claim. We reverse and remand for proceedings consistent with this opinion.

BACKGROUND

History of Worker's Prior Injury

{2} Worker suffered a non-work-related injury (femoral neck fracture) to his right hip in 2002 that required installation of hip screws and a side plate in his right hip. Worker recovered from his 2002 injury and began working shortly thereafter as a carpenter for Larry Reetz Construction, Ltd. (Employer).

{3} In November 2006 Worker began to experience pain in his leg, specifically in the right thigh/hip area where he experienced the femoral neck fracture in 2002. He was seen at the University of New Mexico Hospital (UNMH) six times between 2006 and 2011 to address his pain. During Worker's 2006 visit, Worker's treating physician noted that Worker had "right hip posttraumatic arthritis" and that the arthritis was "in the initial stage[.]" In February 2007 Worker was diagnosed with avascular necrosis (AVN) of the right femoral neck, and a total hip replacement was discussed. Worker did not proceed with hip replacement surgery for economic reasons. In January 2008 Worker returned to UNMH due to "significant pain in his right hip especially with ambulation and work." At that time, total hip replacement was recommended. Worker was again seen in July 2008, at which time a total hip replacement was again recommended and Worker was referred for a preoperative evaluation, which never occurred. Upon Employer's request in 2008, Worker disclosed his preexisting condition of a "bad hip" to Employer and agreed to submit to a medical examination if required. Worker did not return to UNMH until June 2010, when he was given an injection to manage his worsening pain because he indicated that he could not afford to be off work in order to have the total hip replacement surgery. In February 2011 Worker was ready to undergo surgery because he "could not continue to work due to pain." Worker's treating physician at that time described Worker's condition as "posttraumatic degenerative joint disease of the right hip, end-stage." Worker had a preoperative evaluation, and surgery was scheduled. However, Worker never had the surgery, did not seek additional medical care for his hip after his 2011 visit to UNMH, and continued to work for Employer "at full duty" until March 11, 2014, when Worker suffered an on-the-job injury.

{4} According to Employer's president, Larry Reetz, Worker was "a dependable employee" who did "good work" and is an "honest individual." Mr. Reetz testified that Worker did not frequently call in sick nor was Worker a problem from the standpoint of absenteeism. He would have been aware, but was not, had Worker, at some time during his employment, requested an extended period of time off due to his preexisting hip condition. Similarly, Mr. Reetz had no memory of Worker declining to perform a job or task based upon his preexisting condition.

Worker's March 11, 2014, Work-Related Accident and Subsequent Medical Treatment

{5} On March 11, 2014, Worker fell from the third step of a ladder while working at one of Employer's job sites, landing on his right side (March 2014 accident). Worker was referred by Employer to its health care provider, Concentra Medical, where he was seen by Steve Cardenas, P.A. Worker reported an "intense pain in [his] hip" with a pain level of 10/10 and was initially diagnosed with a "contusion of [the] thigh," prescribed pain medication and crutches, and instructed not to work. Worker returned to work when he was released to modified duty on May 8, 2014, then allowed to lift up to fifty pounds. Worker continued to work within the restrictions imposed by his treating physicians until July 12, 2014, when Worker's pain became so debilitating that he was no longer able to continue his employment. Worker has not since returned to work.

{6} Worker continued to receive treatment at Concentra and was eventually prescribed use of a cane because Worker "just could not ambulate without it. He needed the support because his pain was so bad."

Worker also continued to be prescribed pain medication to manage his pain and was referred to physical therapy, which he reported was ineffective.

Worker's Orthopaedic Surgeon's Causation Opinion

{7} Employer's insurer, Builders Trust of New Mexico (Insurer), referred Worker to New Mexico Orthopaedics, where worker was first seen by Dr. Arnold Kiburz on June 9, 2014. Dr. Kiburz noted that Worker's "current condition is very likely related to his initial fall and right hip fracture in a somewhat remote past" but also stated that his "symptoms are consistent with [the] reported work injury." Dr. Kiburz then referred Worker to his colleague Dr. Joshua Carothers because of Dr. Carothers' specialization in hip replacement surgery.

{8} Dr. Carothers first saw Worker on July 8, 2014, four days before Worker was no longer able to work. On that date, Dr. Carothers noted in Worker's chart that "[Worker] broke his hip back in 2002 and underwent open reduction and internal fixation." As to his observations based on his examination of Worker's right hip, Dr. Carothers noted:

> Radiographs of the right hip reviewed today reveal severe joint space narrowing[.] There is a [two] hole dynamic hip screw and side plate with a derotation screw. The hardware appears to be in good position however there has been [AVN] of the femoral head with severe collapse. This is consistent with Ficat stage IV.

At Worker's followup visit on July 17, 2014, Dr. Carothers noted:

> [T]he changes in the hip are rather chronic and I believe that the [AVN] has been long-standing and predated the injury. The patient was having pain prior to his fall and I believe that he had a well[-]compensated condition of the hip that was allowing him to function with occasional and relatively minimal discomfort. I believe that the fall disrupted [the] tenuous balance of the hip and has resulted in an aggravation of the hip and more constant and more debilitating pain.

In response to a question from Insurer's claims department asking him to "[p]lease state to a reasonable degree of medical probability, if the need for a left right necrotic revision and right hip replace[ment is] related to [Worker's] 3/11/14 loss[,]" Dr. Carothers stated: "I believe that the AVN was present prior to the 3/11/14 fall but the fall aggravated the condition and worsened the pain."

Employer/Insurer's Workers' Compensation Complaint

{9} Employer/Insurer filed a complaint with the WCA on August 8, 2014, seeking a determination of compensability and benefits related to Worker's March 2014 accident and injury. Employer/Insurer challenged Dr. Carothers' causation opinion that Worker's fall "aggravated" Worker's "necrosis condition." Specifically, Employer/Insurer stated that Dr. Carothers' opinion was "highly suspect" because Dr. Carothers had not reviewed Worker's prior medical records and could not "pinpoint when the necrosis of the right femur head began without reviewing prior x-rays." Therefore, Employer/Insurer requested that the parties be allowed to depose Dr. Carothers in order to "provide [Dr. Carothers] with all pertinent medical records" because, Employer/Insurer argued, "Dr. Carothers' opinion cannot establish causation, at least not until he has reviewed all pertinent information."[1]

Dr. Carothers' Deposition Testimony

{10} The parties deposed Dr. Carothers on November 5, 2014. When asked by Worker during his deposition what he meant by the phrase "aggravation of the hip" in his July 17 notes, Dr. Carothers explained:

> So my assessment of this is that the severity of his hip did not result from his fall in March. I believe that it—the downward spiral of his hip[—]began with his trauma and fracture in 2002 and he has likely been dealing with or coping with a bad hip for a longer period of time and his symptoms worsened as a result of the fall. But I believe that his hip was in end[-]stage arthritis related to [AVN] prior to the fall.

During its examination of Dr. Carothers, Employer/Insurer presented Dr. Carothers with Worker's UNMH medical records from 2006-2011. After reviewing the records and being asked whether "there has been a change in your opinion as to aggravation, causation with respect to the initial fall and March [2014] fall[,]" Dr. Carothers stated:

> So like I attempted to make clear, I think [Worker's] condition of his hip relates to his initial fall in 2002. I would have expected him to have pain long before the fall in March [2014] as is demonstrated by the notes from UNM[H;] however, there is a [three]-year gap between the last UNM[H] note and the New Mexico Orthopedic notes, so he obviously didn't have a total hip replacement [and] has been making d[o]. So the difficulty is [Worker has] been making d[o], he has another fall at work, now he is not making d[o]. So it's reasonable to say that the fall could have aggravated the condition of his hip, but by [and] large his symptoms, his hip pain are stemming from the original injury.

When asked by Employer/Insurer whether he had "an opinion as to whether or not the need for the total hip [replacement] is related to the initial fall versus the March [2014] fall[,]" Dr. Carothers responded:

> The need for a total hip [replacement] was established by the initial fall, the injury, the sub congeal—or the [AVN], and the resultant severe arthritis. The need for it at this moment may be related to his aggravated symptoms.

On redirect, Dr. Carothers was asked, "Is it your opinion that the work accident in March [2014] hastened the need for the total hip replacement surgery?" Dr. Carothers responded:

> That's a difficult question because he's been contemplating hip replacement for it sounds like the past five or six years. And, as I made clear in my notes, his hip has been existing in a tenuous balance being able to deal with the severity of his hip arthritis. So I would still maintain that the need for hip replacement now may be related to that fall from March [2014]. But he's been needing hip replacement for years.

Asked to state his causation opinion based on a reasonable degree of medical probability, Dr. Carothers stated, "So I would say his

[1]Employer/Insurer cited Niederstadt v. Ancho Rico Consolidated Mines, 1975-NMCA-059, 88 N.M. 48, 536 P.2d 1104, as the basis for its request. We discuss the import of Niederstadt later in this opinion.

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March 28, 2018

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Friday, April 6, 3:30 p.m.
Friday, April 20, 9 a.m.
Thursday, April 26, Noon
Friday, May 18, 3:30 p.m.
Thursday, May 24, 3:30 p.m.
Friday, June 22, 3:30 p.m.
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April 6

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5.0 G 1.0 EP
9:00 a.m-4:15 p.m.
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2.0 EP
10 a.m.- Noon
$109

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12:30-3:40 p.m.
$159

April 20

Ethically Managing Your Practice (2017 Ethicspalooza)
1.0 EP
10:30-11:30 a.m.
$55

April 26

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6.0 G 1.0 EP
8:30 a.m.-3:50 p.m.
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2.0 EP
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1:30–3:30 p.m.
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fall in March [2014] prompted him to seek a hip replacement at that time or within the next few months" and explained that his opinion was "based on the symptoms reported" to him by Worker.

Worker's Complaint Seeking Benefits

{11} On December 9, 2014, Worker filed a complaint with the WCA, seeking temporary total disability (TTD), PPD, and medical benefits. In support of his complaint, Worker relied on Dr. Carothers' testimony regarding causation between Worker's March 2014 accident and his disability. Specifically, Worker contended that:

> Dr. Carothers stated that the fall at work aggravated Worker's pre-existing condition and worsened his pain. Dr. Carothers also stated that there was a [three]-year gap in medical records immediately prior to the fall at work on March 11, 2014[,] indicating that Worker was making due regarding his hip condition. Notably, Worker has been working as a carpenter for this Employer the last [eight] years. Dr. Carothers state[d] that the fall at work prompted Worker to seek a hip replacement.

Worker included Dr. Carothers' deposition testimony with his complaint as well as Dr. Carothers' earlier form letter in which he had opined that Worker's March 2014 fall "aggravated the condition and worsened the pain."

{12} Employer/Insurer answered the complaint and raised as affirmative defenses that Worker was not hurt on the job, Worker was not disabled as a result of the March 2014 accident, and Worker failed to establish a causal link between the March 2014 accident and his disability to a reasonable medical probability. Employer/Insurer continued to challenge Dr. Carothers' causation opinion as being "not valid" and "deficien[t]" based on Worker's inclusion of Dr. Carothers' form letter as an attachment to his complaint, which Employer/Insurer noted Dr. Carothers provided before he was deposed and, therefore, before he "had all pertinent medical information."[2] Employer/Insurer also argued that Dr. Carothers' testimony failed to establish a causal link between the March 2014 accident and Worker's disability because "Dr. Carothers testified that Worker's need for [a] total hip [replacement] was established by an unrelated fall" and that "the need for surgery *might be* related to the fall reported with this Employer."

{13} The parties attended a mediation conference on January 13, 2015, but were unable to reach an agreement. The mediator's recommended resolution found that "Worker has carried his burden of proof and Worker's current complaints are related to his on-the-job injury" and thus recommended that "the treatment recommended by Worker's [health care provider] be provided with all related treatment[.]" Employer rejected the recommended resolution.

Worker's Independent Medical Examination (IME)

{14} In March 2015 Worker petitioned the WCJ for an IME "to determine whether the need for right hip replacement surgery recommended by orthopaedic surgeon Dr. Carothers is causally related to the work accident of March 11, 2014." Worker explained that "[d]espite Dr. Carothers testifying that the work accident aggravated and worsened the pre[]existing hip condition, the surgery has been denied." Despite Employer/Insurer's opposition, the WCJ granted Worker's request.

{15} An IME panel comprised of Dr. Barrie Ross, a specialist in physical medicine and rehabilitation, and Dr. Paul Legant, an orthopaedic surgeon, met on June 30, 2015. In its ensuing report, the panel responded to specific questions posed by the WCJ.[3] In response to a question about "the nature of the injury or injuries sustained by Worker as a result of the job[-]related accident(s)[,]" the panel described the injury Worker suffered in the March 2014 accident as a "[r]ight hip contusion superimposed upon severe pre[]existing posttraumatic right hip degenerative joint disease." In response to the question, "[w]hich of Worker's complaints, if any, are *not* related to the job related injury(ies) on the above date(s) of injury[,]" the panel stated, "*None* of [Worker's] current complaints are related to the work injury of March 11, 2014. . . . [Worker's] current symptoms and condition are a direct result of his pre[]existing right hip diagnoses." The WCJ also asked whether "the medical care that has been provided to Worker to date for treatment of [the] work[-]related injury or injuries identified [by the panel has] been reasonable and necessary for treatment of the job related injury(ies)[,]" and if not, for a detailed explanation of what aspects of Worker's "pa[s]t treatment (including [W]orker's medication regimen) was not reasonable or necessary." The panel responded, "Yes, the medical care [Worker] has received to date has been medically reasonable and necessary." Finally, the panel recommended that Worker undergo "total hip arthroplasty" but noted that "[t]his treatment recommendation is *unrelated* to the . . . March 2014 [injury] and rather, follows [the] course of care discussed in 2007, recommended in 2008 and scheduled for . . . 2011 at UNMH."

{16} The parties proceeded to trial on November 9, 2015. Worker and Mr. Reetz testified in person, and the WCJ admitted the deposition testimony of all of Worker's treating health care providers as well as IME panelists Drs. Ross and Legant. In pertinent part, the WCJ made the following findings regarding Worker's injury, causation, and entitlement to benefits:

> 53. The medical evidence herein support[s] a [f]inding[] that Worker's [AVN] was not caused by Worker's fall from a ladder on March 11, 2014.
>
> 54. The medical evidence herein supports a [f]inding that Worker suffered a contusion to his right thigh as a result of Worker's fall from a ladder on March 11, 2014.
>
> . . . .
>
> 60. Worker is not entitled to modifier benefits after June 30, 2015[, his date of maximum medical improvement,] because his inability to return to work is not caused by his work[-]related injury.

The WCJ thus concluded that:

> 3. Worker suffered job[-]related injuries which arose within the course and scope of, and inci-

[2]Employer/Insurer again cited Niederstadt despite having itself presented Dr. Carothers with Worker's UNMH records during Dr. Carothers' deposition and the fact that Dr. Carothers' opinion that Worker's AVN was aggravated by the fall was unchanged.

[3]The WCJ's order granting Worker's request for an IME provided that the parties were to work together to jointly prepare a letter to the IME panel and that in the event the parties could not agree, the WCJ would issue a letter to the panel. On May 13, 2015, the WCJ held a hearing at which the parties explained that they had been unable to reach agreement as to a letter. Thus the WCJ issued his own letter to the panel, containing thirteen questions.

> dental to, his employment with Employer on March 11, 2014.
>
> . . . .
>
> 6. Worker's contusion to his right thigh on March 11, 2014[,] was suffered within the course and scope of his employment with Employer[] and as a consequence, is compensable under the . . . Act.
>
> 7. Worker's AVN and the need for total right hip replacement/arthroplas[t]y are unrelated to Worker's fall on March 11, 2014, and were not suffered within the course and scope of his employment with Employer[] and as a consequence, are not compensable under the Worker[s'] Compensation Act.
>
> 8. Worker's unrelated right hip condition precludes Worker's return to work with Employer at this time.

The WCJ awarded Worker "[b]enefits consistent with, and limited by, the terms of this [o]rder." Worker appealed.

DISCUSSION

{17} Worker raises three points of error: (1) the WCJ failed to apply the correct legal standard in determining whether Worker met his burden of proof as to causation between his accident and his disability, thereby incorrectly denying worker PPD and medical benefits; (2) the WCJ failed to award Worker mileage to and from medical appointments; and (3) the WCJ erred by declining to address Worker's bad faith claim against Employer/Insurer and refusing to impose a bad faith penalty on Employer/Insurer. We address each issue in turn.

I. Whether the WCJ Properly Applied the Requirements of NMSA 1978, Section 52-1-28 (1987)

{18} Throughout the process, Employer/Insurer framed the issue in this case as being "whether there was a causal connection between the March 11, 2014[,] work injury and Worker's total right hip disability, including Worker's need for total hip replacement." Citing Section 52-1-28(A), Employer/Insurer asserts, "Worker bore the statutory burden of establishing a causal connection between his March 11, 2014 accident and his current overall disability to his right hip and need for total hip replacement surgery." By "current overall disability to his right hip[,]" we understand Employer/Insurer to mean Worker's AVN. The WCJ appears to have agreed with and followed Employer/Insurer's framing of the issue as evidenced by his findings and conclusions that focus on the causal connection between Worker's March 2014 accident and (1) his AVN, and (2) Worker's need for hip replacement surgery. Worker contends that Employer/Insurer and the WCJ applied the wrong legal standard because the issue in this case is whether the medical evidence shows that Worker's accident resulted in an injury—i.e., the *aggravation* of his preexisting AVN—that caused him to become disabled, not whether Worker's need for a particular type of medical procedure (i.e., total hip replacement surgery) to treat his preexisting AVN arose from his March 2014 accident. We agree with Worker.

A. Standard of Review

{19} At its core, this case involves a question of statutory interpretation, namely, whether the WCJ properly interpreted and applied the requirements of Section 52-1-28. We review the interpretation of a statute de novo. *Smith v. Ariz. Pub. Serv. Co.*, 2003-NMCA-097, ¶ 5, 134 N.M. 202, 75 P.3d 418. "This Court is not required to defer to the WCJ's interpretation of [the Act]." *Baca v. Complete Drywall Co.*, 2002-NMCA-002, ¶ 12, 131 N.M. 413, 38 P.3d 181. We consider the Act "in its entirety, construing each section in connection with every other section." *Id.* ¶ 13 (internal quotation marks and citation omitted).

{20} Recognizing, as many New Mexico appellate courts have, that the Act's provisions are imprecise, we begin by parsing Section 52-1-28 in order to clarify its requirements. *See Chavez v. Mountain States Constructors*, 1996-NMSC-070, ¶¶ 25-44, 122 N.M. 579, 929 P.2d 971 (discussing the ambiguity of NMSA 1978, Section 52-1-24 (1990) of the Act and undertaking to "examine and describe the various elements of the statute to clarify their meaning" in order to apply them to the given facts). Once we "ascertain[] the meaning of the statute, we review the whole record to determine whether the WCJ's findings and award are supported by substantial evidence." *Smith*, 2003-NMCA-097, ¶ 5. "[W]e disregard that [evidence] which has little or no worth and then decide if there is substantial evidence in the whole record to support the agency's finding or decision." *Trujillo v. Los Alamos Nat'l Lab.*, 2016-NMCA-041, ¶ 15, 368 P.3d 1259 (internal quotation marks and citation omitted), *cert. denied*, 2016-NMCERT-004. "Where all or substantially all of the evidence on a material issue is documentary or by deposition, the [reviewing court] will examine and weigh it, and will review the record, giving some weight to the findings of the [court] on such issue, and will not disturb the same upon conflicting evidence unless such findings are manifestly wrong or clearly opposed to the evidence." *Martinez v. Universal Constructors, Inc.*, 1971-NMCA-160, ¶ 10, 83 N.M. 283, 491 P.2d 171 (internal quotation marks and citation omitted). We review the WCJ's application of the law to the facts de novo. *Tom Growney Equip. Co. v. Jouett*, 2005-NMSC-015, ¶ 13, 137 N.M. 497, 113 P.3d 320.

B. Compensable Claims Under the Act

{21} Section 52-1-28(A) provides that workers' compensation claims are only compensable "(1) when the worker has sustained an accidental injury arising out of and in the course of his employment; (2) when the accident was reasonably incident to his employment; and (3) when the disability is a natural and direct result of the accident." When an employer denies that "an alleged disability is the natural and direct result of the accident, the worker must establish that causal connection as a probability by expert testimony of a health care provider[.]" Section 52-1-28(B). While Sections 52-1-28(A)(3) and (B) appear to require a single causation analysis (between the accident and the disability), embedded within that analysis is the requirement that there be an injury that is causally connected to both the accident and the disability. *See Oliver v. City of Albuquerque*, 1987-NMSC-096, ¶ 4, 106 N.M. 350, 742 P.2d 1055 (explaining that Section 52-1-28(A) "requires that a worker's disability . . . be causally connected to the worker's injury . . . and that the injury be causally connected to the worker's accident"); *Trujillo*, 2016-NMCA-041, ¶ 46, n.4 (holding that there was evidence of the existence of a causal relationship between the worker's accident and injuries but noting that the WCJ's conclusions did not address whether causation as to disability had been established). Thus, Section 52-1-28 must be understood as requiring the worker to establish that (1) a work-related accident caused an injury or injuries, and (2) the injury resulted in disability. Where a worker sustains multiple injuries as a result of one accident, a causal connection between the accident and each injury must be established in order for the injury to be compensable. *See*, *e.g.*, *Trujillo*, 2016-NMCA-041, ¶¶ 32, 36 (explaining that "a health care provider must be allowed to equivocate with respect to certain injuries about which he or she is unsure as to causa-

tion while still offering positive statements as to others" and concluding that the expert testimony established causation as to certain injuries but not others); *Sanchez v. Zanio's Foods, Inc.*, 2005-NMCA-134, ¶¶ 7, 54, 138 N.M. 555, 123 P.3d 788 (explaining that the worker was diagnosed with two different injuries and reversing and remanding the WCJ's compensation award because there was insufficient evidence to support a finding of causation between the worker's accident and one of the two claimed injuries). Likewise, where multiple types of disability are claimed, a causal connection between each accidental injury and the resulting claimed disability must be established. *See*, *e.g.*, *Baca*, 2002-NMCA-002, ¶¶ 14-26 (explaining that a single accident can result in multiple injuries, some of which may develop immediately while others may not develop until much later, and that each type of disability—e.g., TTD and PPD—that results from a work-related accidental injury is potentially compensable).

1. The Injury Requirement Vis-à-Vis a Preexisting Condition

{22} In order to receive benefits, a worker must "sustain[] an accidental injury arising out of and in the course of his employment[.]" Section 52-1-28(A)(1). "Pre[]existing disease or infirmity of the employee does not disqualify a claim under the 'arising out of employment' requirement [of Section 52-1-28(A)(1)] if the [work-related accident] aggravated, accelerated, or combined with the disease or infirmity to produce the death or disability for which compensation is sought." *Edmiston v. City of Hobbs*, 1997-NMCA-085, ¶ 9, 123 N.M. 654, 944 P.2d 883 (first internal quotation marks and citation omitted). In cases where the worker has a preexisting condition, there are at least two different types of injuries that may result: (1) the aggravation, acceleration, or worsening of a preexisting condition or prior non-disabling injury; or (2) a new injury that combines with a worker's preexisting condition and is amplified by a worker's unusual susceptibility to injury because of the preexisting condition. *Compare Tom Growney*, 2005-NMSC-015, ¶ 28 (explaining that "[i]f the stress of labor aggravates or accelerates the development of a preexisting infirmity causing an internal breakdown of that part of the structure, a personal injury by accident does occur" (internal quotation marks and citation omitted)), *Oliver*, 1987-NMSC-096, ¶ 6 (explaining that "where a pre[]existing condition . . . is aggravated by [a work-related accident, Section 52-1-28's] requirement as to job-related injury is met"), *Reynolds v. Ruidoso Racing Ass'n*, 1961-NMSC-116, ¶¶ 20-23, 69 N.M. 248, 365 P.2d 671 (discussing the differences between "aggravation" or "acceleration" of a preexisting condition and instances where an accident "precipitates disability from a latent prior condition" or "combine[s] with the disease or infirmity to produce the . . . disability" (internal quotation marks and citations omitted)), *with Edmiston*, 1997-NMCA-085, ¶¶ 23-24, 26-27 (holding compensable a worker's PPD resulting from the combination of the worker's preexisting condition—multiple myeloma cancer—and a work-related back injury, the treatment of which was limited by the worker's cancer), *and Leo v. Cornucopia Rest.*, 1994-NMCA-099, ¶¶ 6, 30, 118 N.M. 354, 881 P.2d 714 (explaining that the worker's accident "did not exacerbate or accelerate [the worker's preexisting] heart and lung conditions, although the heart and lung conditions imposed significant restrictions on the treatment of [the worker's] back condition and on his recovery from the back injury[,]" and holding that compensation is based on "the combined effect of both impairments"). *Cf. Salopek v. Friedman*, 2013-NMCA-087, ¶¶ 17-22, 308 P.3d 139 (explaining the differences between "aggravation" and "eggshell" theories of liability in tort law). The latter type of injury is the constructive equivalent of the "eggshell plaintiff" theory in tort law. *Compare id.* ¶ 17 (discussing New Mexico's "eggshell plaintiff" jury instruction, UJI 13-1802 NMRA, which states that a tort defendant "is said to 'take the [p]laintiff as he finds him' " (quoting UJI 13-1802)), *with Edmiston*, 1997-NMCA-085, ¶ 25 (explaining that in workers' compensation law, the prevailing rule is that " 'the employer takes the employee as it finds that employee' " (quoting 1 Arthur Larson & Lex K. Larson, *The Law of Workmen's Compensation* § 12.21 (1996))). If either type of injury results in disability, "the employee is entitled to compensation to the full extent of the disability even though attributable in part to a pre[]existing condition." *Smith*, 2003-NMCA-097, ¶ 12 (internal quotation marks and citation omitted).

{23} Aggravation, acceleration, or worsening of a preexisting condition is, itself, a discrete type of injury and can occur either as a result of a single accidental incident or develop over time as a result of employment activities. *Compare Bufalino v. Safeway Stores, Inc.*, 1982-NMCA-127, ¶¶ 2, 21, 98 N.M. 560, 650 P.2d 844 (describing the worker's accident as "the stress which occurred in lifting heavy boxes[,]" resulting in his heart attack (injury)); *with Oliver*, 1987-NMSC-096, ¶ 4 (describing the worker's accident as "the stress induced by [the worker's] job"; which caused his heart attack (injury)); *and Tom Growney*, 2005-NMSC-015, ¶ 27 (explaining that New Mexico "precedent does not require a discrete 'accident,' in the traditional sense, if employment activity itself aggravates a preexisting injury and results in disability"). *See Herndon v. Albuquerque Pub. Schs.*, 1978-NMCA-072, ¶ 27, 92 N.M. 635, 593 P.2d 470 (explaining that "if the stress of labor aggravates or accelerates the development of a preexisting infirmity causing an internal breakdown of that part of the structure, a personal injury by accident does occur"). Non-debilitating pain attributable to a prior injury or preexisting condition that increases and becomes disabling as a result of a work-related accident is a type of compensable injury. *See Tom Growney*, 2005-NMSC-015, ¶ 53; *Tallman v. ABF (Arkansas Best Freight)*, 1988-NMCA-091, ¶ 29, 108 N.M. 124, 767 P.2d 363 (affirming the WCJ's finding that an accidental injury occurred where the worker had experienced pain for many years prior to his work-related accident but experienced a different level of pain afterwards that was "so severe he could no longer work"). "There is no requirement that there be a physical tissue change for there to be a compensable disability." *Schober v. Mountain Bell Tel.*, 1980-NMCA-113, ¶ 8, 96 N.M. 376, 630 P.2d 1231 (rejecting the employer's argument that "[w]ithout some per-

[4]In his concurring and dissenting opinion in Edmiston, Chief Judge Hartz noted that while reliance on out-of-state cases involving workers' compensation is "unwise on many issues" because the Act contains "a number of unique provisions, . . . because the language regarding causation is fairly uniform among workers' compensation statutes, we have typically looked to the law elsewhere for guidance on novel issues with respect to causation." 1997-NMCA-085, ¶ 35 (Hartz, C.J., concurring in part, dissenting in part).

manent physical alteration . . . there is no disability"). "If the employee suffers from a latent preexisting condition that inevitably will produce injury or death, but the employment acts on the preexisting condition to hasten the appearance of symptoms or accelerate its injurious consequences, the employment will be considered the medical cause of the resulting injury." *Ex parte Reed Contracting Servs., Inc. v. Reed Contracting Servs., Inc.*, 203 So. 3d 96, 102-03 (Ala. Civ. App. 2016) (internal quotation marks and citation omitted).[4]

2. What Constitutes a "Disability" Under Section 52-1-28

{24} The term "disability" as used in the Act has evolved as a result of legislative amendments to the Act. At one point, it was true that "the primary test of disability [was] the worker's capacity to perform work." *Salcido v. Transamerica Ins. Grp.*, 1985-NMSC-002, ¶ 10, 102 N.M. 217, 693 P.2d 583 (emphasis omitted). Many cases construing Section 52-1-28 articulated and applied this standard in making determinations regarding causation between an accident and disability, regardless of the type of compensation sought. *Compare Salcido*, 1985-NMSC-002, ¶¶ 9-13 (applying the "capacity to perform work" test for determining disability in a case where the worker sought temporary disability benefits for a discrete interval of time), *with Bufalino*, 1982-NMCA-127, ¶¶ 1, 15 (explaining that "[t]he primary test of disability is the capacity to perform work" in a case where the worker was seeking "total permanent disability" benefits). In the 1980s, however, the Legislature amended the Act numerous times, specifically altering how "disability" is defined in New Mexico. *See Leo*, 1994-NMCA-099, ¶ 12. In *Leo*, this Court explained:

> The changing and competing policy interests behind compensation laws are reflected in the successive legislative changes defining disability. Most compensation laws adopt one of three approaches in defining disability: a definition based on wage loss, a definition based on impairment rating, or a definition based on a reduction in an individual's ability to perform work. Prior to 1986, disability under [the Act] was defined in terms of capacity to work. In 1986 the definition was changed to incorporate concepts of all three approaches. In 1987 the statutory definition of disability was again amended to incorporate the concepts of both impairment and inability to perform work. . . . [A]s a practical matter, the definition of disability in the 1987 Act represents a return to the pre-1986 definition of disability.

Id. (citations omitted).

{25} In 1990 the Legislature again amended the Act and established a clear distinction between TTD and PPD, effectively defining "disability" in two different ways. Whereas prior to 1990 the concept of the worker's capacity to perform work was incorporated into definitions of both TTD and PPD, after 1990 the concept only remains in defining TTD. *See* NMSA 1978, § 52-1-25.1(A) (1990, amended 2005 and 2017) ("As used in the . . . Act, 'temporary total disability' means the inability of the worker . . . to perform his duties prior to the date of the worker's maximum medical improvement."). *Compare* NMSA 1978, § 52-1-26(B) (1989, amended 1990 and 2017) (providing that " 'partial disability' means a condition whereby a worker . . . suffers an impairment and is unable to some percentage extent to perform any work for which he is fitted by age, education and training"), *with* § 52-1-26(B) (1990) (providing that " 'partial disability' means a condition whereby a worker . . . suffers a permanent impairment"). Capacity to work still plays a role in determining PPD benefits based on the physical capacity modifier variable of the statutory formula established in the 1990 amendments. *See* NMSA 1978, § 52-1-26.4(B) (2003) (providing that "[t]he award of points to a worker shall be based upon the difference between the physical capacity necessary to perform the worker's usual and customary work and the worker's residual physical capacity"). However, whether or not a worker is deemed partially disabled under Section 52-1-26(B) is based solely on physical impairment, not ability to work. *See Smith*, 2003-NMCA-097, ¶¶ 15-16 (discussing the differences between TTD and PPD and explaining that PPD is determined not by one's ability or inability to work but rather based on impairment). Thus, following the 1990 amendments, the relevant causation inquiry under Section 52-1-28 necessarily changes depending on what type of disability the worker claims. In cases where a worker claims TTD, the relevant question is whether the worker has established a causal connection between his accident and his inability to work. In cases where a worker claims PPD, the relevant question is whether the worker has established a causal connection between his accident and a permanent impairment.

{26} Importantly, there is no indication in the plain language of the Act, in our cases interpreting the Act, or that can be gleaned from legislative amendments to it that suggests that Section 52-1-28(A) requires that a worker prove a causal connection between an accident and the need for a particular type of medical treatment. *See* § 52-1-28(A)(3) (providing that compensation is allowed "when the *disability* is a natural and direct result of the accident" and saying nothing regarding a causal connection between an accident and recommended medical services to treat the worker's injury or condition (emphasis added)). Whether an employer is liable for providing a particular health care service—such as surgery—depends on whether the service is "reasonable and necessary" and is not part of the causation analysis under Section 52-1-28(A). *See* NMSA 1978, § 52-1-49(A) (1990) (providing that "[a]fter an injury to a worker . . . and continuing as long as medical or related treatment is reasonably necessary, the employer shall . . . provide the worker in a timely manner reasonable and necessary health care services from a health care provider"). Such a determination, while related to the question of the compensability of an injury, is a separate matter that does not bear on the determination of causation under Section 52-1-28(A). *See Scott v. Transwestern Tankers, Inc.*, 1963-NMSC-205, ¶ 7, 73 N.M. 219, 387 P.2d 327 (explaining that "[m]edical and surgical treatment is incidental to and a concomitant part of a compensable injury for which the employer is liable under the Act"); *Douglass v. N.M. Regulation & Licensing Dep't*, 1991-NMCA-041, ¶ 19, 112 N.M. 183, 812 P.2d 1331 (explaining that "the right to recover medical benefits requires a showing that [the] worker has suffered a 'compensable injury' before medical benefits may be awarded"). Notably, entitlement to medical benefits—including coverage for the cost of surgery—depends simply on whether the worker suffered an injury and is not contingent on a finding of disability. Section 52-1-49(A) (providing that health care services are to be provided "[a]fter an *injury* to a worker" (emphasis added)); *DiMatteo v. Dona Ana Cty.*, 1985-NMCA-099, ¶ 13, 104 N.M. 599, 725 P.2d 575 ("An award of medical expenses is properly made despite the absence of a finding of disability."); *cf. Vargas v. City of Albuquerque*, 1993-NMCA-136,

¶ 9, 116 N.M. 664, 866 P.2d 392 (affirming the WCJ's denial of medical benefits where the WCJ found that the worker "did not sustain any injury" in the work-related accident because an employer "is only obligated to provide services after an injury").

{27} Finally, inevitability of disability (or death) plays no role in determining whether a worker's actual disability is causally related to a work-related accident. *See Edmiston*, 1997-NMCA-085, ¶¶ 19-27 (holding that the WCJ erred by relying, in part, on the fact that the worker's preexisting condition "*might have been* just as disabling with or without the [accidental injury]" suffered (emphasis added)); *see also Gilbert v. E.B. Law & Son, Inc.*, 1955-NMSC-083, ¶¶ 22-23, 31, 60 N.M. 101, 287 P.2d 992 (affirming the trial court's refusal to instruct the jury that a worker's preexisting condition "would inevitably have caused his death" because such an instruction "does not correctly state the law in that it ignores the proposition that [a preexisting condition] may have been materially aggravated and death accelerated by reason of [a work-related accidental injury]" (internal quotation marks omitted)). In a case such as this involving a preexisting condition, WCJs must take care not to rely on the fact that a worker's preexisting condition *may* have potentially become just as disabling without an accidental injury in determining whether causation has been established. *Edmiston*, 1997-NMCA-085, ¶¶ 19-20, 25-27. "[T]he test is not what would have happened to someone else . . . but what [the accident] actually did to its victim." *Id.* ¶ 25 (internal quotation marks and citation omitted).

3. Causation and Proof Thereof

{28} "In order to establish causation under the . . . Act, a worker must show that his disability more likely than not was a result of his work-related accident." *Buchanan v. Kerr-McGee Corp.*, 1995-NMCA-131, ¶ 23, 121 N.M. 12, 908 P.2d 242 (internal quotation marks and citation omitted). "It is settled that the contributing factor need not be the major contributory cause." *Id.* (internal quotation marks and citation omitted). "To be compensable, a worker's accident need not be the sole cause of his disability or death[;] a worker need only show that it was a contributing cause." *Wilson v. Yellow Freight Sys.*, 1992-NMCA-093, ¶ 12, 114 N.M. 407, 839 P.2d 151. "The work-related cause may, in fact, be a minor factor so long as the worker establishes that, as a matter of medical probability, it was a cause of the disability." *Buchanan*, 1995-NMCA-131, ¶ 23. "Causation exists within a reasonable medical probability when a qualified medical expert testifies as to his opinion concerning causation and, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action." *Sanchez v. Molycorp, Inc.*, 1985-NMCA-067, ¶ 16, 103 N.M. 148, 703 P.2d 925. "[O]nce [a worker] establishe[s] that the accidental injury caused disability, it matters not whether a pre[]existing condition contributed to the ultimate disability." *Tallman*, 1988-NMCA-091, ¶ 33. Thus, principles of causation are equally applicable to the assessment of compensability regardless of whether an accidental injury is new or if it entails aggravation of a preexisting condition.

{29} Section 52-1-28(B) requires the worker to establish causation "as a probability by expert testimony of a health care provider" in cases where the employer disputes a causal connection between the accident and disability. "[T]he medical expert need not state his opinion in positive, dogmatic language or in the exact language of the statute. But he must testify in language the sense of which reasonably connotes precisely what the statute categorically requires." *Gammon v. Ebasco Corp.*, 1965-NMSC-015, ¶ 23, 74 N.M. 789, 399 P.2d 279. "An opinion, an honest effort to logically and rationally connect the cause and effect, is all that we can hope to obtain." *Elsea v. Broome Furniture Co.*, 1943-NMSC-036, ¶ 43, 47 N.M. 356, 143 P.2d 572.

{30} New Mexico has adopted the uncontradicted medical evidence rule, which is "an exception to the general rule that a trial court can accept or reject expert opinion as it sees fit." *Banks v. IMC Kalium Carlsbad Potash Co.*, 2003-NMSC-026, ¶ 35, 134 N.M. 421, 77 P.3d 1014 (internal quotation marks and citation omitted). "The rule is based on [Section] 52-1-28(B), which requires the worker to prove causal connection between disability and accident as a medical probability by expert medical testimony. Because the statute requires a certain type of proof, uncontradicted evidence in the form of that type of proof is binding on the trial court." *Id.* (internal quotation marks and citation omitted). "In the event of a dispute between the parties concerning . . . the cause of an injury or any other medical issue, . . . either party may petition a [WCJ] for permission to have the worker undergo an [IME]." NMSA 1978, § 52-1-51(A) (2013). Additionally, "[i]f a [WCJ] believes that an [IME] will assist the judge with the proper determination of any issue in the case, including the cause of the injury, the [WCJ] may order an [IME] upon the judge's own motion." *Id.* It is well settled that "where a conflict arises in the proof, with one or more experts expressing an opinion one way, and others expressing a diametrically contrary opinion, the trier of the facts must resolve the disagreement and determine what the true facts are." *Yates v. Matthews*, 1963-NMSC-038, ¶ 11, 71 N.M. 451, 379 P.2d 441. However, there must be a rational basis for the WCJ to reject a proposed finding of causation. *Cf. Chevron Res. v. N.M. Superintendent of Ins.*, 1992-NMCA-081, ¶ 8, 114 N.M. 371, 838 P.2d 988 (explaining that "[w]e must affirm the WCJ if there was a rational basis for the WCJ to reject [the w]orker's proposed finding that his lung condition was aggravated during the course of his employment"). Expert testimony that "fails to speak to the ultimate issue in the case" is not afforded substantial weight. *Trujillo*, 2016-NMCA-041, ¶ 39. In cases involving a preexisting condition where the worker has initially established causation through expert testimony, "the burden of production should be upon an employer to show that the effects of the preexisting condition are identifiably separate and unrelated." *Edmiston*, 1997-NMCA-085, ¶ 17.

C. Whether Worker Met His Burden Under Section 52-1-28

{31} Worker's December 2014 complaint stated that his March 2014 accident caused an aggravation of his preexisting condition, after which he became disabled. Specifically, Worker described the issue as being "whether Worker's preexisting []arthritis and [AVN] *was made worse* by the fall at work on March 11, 2014." (Emphasis added.) Worker never contended that the March 2014 accident exclusively *caused* his AVN or arthritis. Employer/Insurer's response focused on establishing what Worker had already conceded—that his AVN and arthritis were preexisting conditions that were not causally related to the March 2014 accident—and challenged Dr. Carothers' opinion regarding causation. Employer failed to address the question of aggravation or applicable law regarding aggravation of a preexisting condition. As a result, the vast majority of expert testimony elicited focused on whether Worker's March 2014 accident caused Worker's AVN and whether the accident itself caused the need for Worker's hip replacement surgery. Both inquiries were factually and legally deficient. Exacerbating the analyses' shortcomings were (1) the WCJ's list of questions to the IME panel, which ad-

vanced the same misunderstanding of the applicable legal standards shared by Employer/Insurer, thereby devaluing testimony elicited in response thereto; and (2) Worker's own failure to clarify the basis for his claim when questioning experts—i.e., that his claimed injury was "aggravation of a preexisting right hip condition" rather than the contusion he suffered as a result of the accident—and articulate the basis for each of the benefits he sought (TTD, PPD, and medical).

{32} We review the record to determine (1) whether Worker established causation under Section 52-1-28, specifically whether his March 2014 accident caused an aggravation of his preexisting condition resulting in his disability or disabilities; and (2) if so, whether the WCJ erred by failing to award Worker benefits related to his aggravation injury.

1. Worker Met His Burden of Establishing, Through Expert Medical Testimony, a Causal Connection Between His Work-Related Accident, His Injury (Aggravation of His AVN), and His Inability to Work

{33} On July 17, 2014, Dr. Carothers noted that Worker experienced "pain prior to his fall, and I believe that he had a well[-] compensated condition of the hip that was allowing him to function with occasional and relatively minimal discomfort. *I believe that the fall disrupted* [*the*] *tenuous balance of the hip and has resulted in an aggravation of the hip and more constant and more debilitating pain*." (Emphasis added.) At his deposition, Dr. Carothers elaborated on this note: "So my assessment of this is that the severity of his hip did not result from his fall in March. I believe that . . . the downward spiral of his hip began with his trauma and fracture in 2002 and he has likely been dealing with or coping with a bad hip for a longer period of time *and his symptoms worsened as a result of the fall*." (Emphasis added.) Dr. Carothers further testified that he believed Worker "was coping—was able to cope with the hip in its condition and that as a result of the fall, the pain worsened. He was no longer able to cope" and that "the difficulty is [Worker has] been making due, he ha[d] another fall at work, now he is not making due." In other words, as a direct and natural result of Worker's March 2014 accident, Worker suffered debilitating pain that caused him to no longer be able to work as of July 12, 2014.

{34} The record thus reveals that from early on, Dr. Carothers unequivocally identified Worker's injury as being an aggravation of his preexisting AVN, evidenced by Worker's increased pain and "inability to cope" following the fall. He causally connected that injury to Worker's March 2014 accident and further established that Worker's inability to work (i.e., his TTD) resulted from his increased pain post-injury. Employer/Insurer's effort to seize upon parts of Dr. Carothers' testimony that appear to equivocate as to causation between Worker's accident and his need for surgery—i.e., Dr. Carothers' statement that "the need for hip replacement now *may be related* to that fall from March"—is unavailing because that is not the relevant inquiry. *Cf. Trujillo*, 2016-NMCA-041, ¶ 35 (explaining that a statement that accepts a proffered premise and acknowledges something as a possibility "is not sufficient to negate the clear assertions of causation previously [made]"). Importantly, Dr. Carothers never opined that the March 2014 accident was the sole cause of Worker's inability to work. Rather, he readily and repeatedly acknowledged that Worker had a severe preexisting condition and conceded that the severity of Worker's condition and his need for surgery are not solely attributable to the accident. Even assuming Dr. Carothers' testimony establishes nothing more than that Worker's accident was a minor factor contributing to his inability to work, that is sufficient to establish causation. *See Buchanan*, 1995-NMCA-131, ¶ 23. We conclude that Dr. Carothers' causation opinion meets the requirements of Section 52-1-28 because his testimony establishes, first, that Worker's March 2014 accident caused an aggravation injury (aggravation of Worker's preexisting AVN) and, second, that the aggravation injury "more likely than not" caused Worker to become disabled. *Buchanan*, 1995-NMCA-131, ¶ 23 (internal quotation marks and citation omitted).

{35} Because of the uncontradicted medical evidence rule, the question then becomes whether Dr. Carothers' testimony is itself inherently deficient and therefore unable to serve as the basis for meeting the requirements of Section 52-1-28(B), or alternatively, whether other medical expert testimony sufficiently contradicted Dr. Carothers' causation testimony, thus allowing the WCJ to reject Dr. Carothers' testimony. *See Banks*, 2003-NMSC-026, ¶ 35. If not, the WCJ was bound by Dr. Carothers' causation opinion. *Id.* We address each of these questions in turn.

2. Employer/Insurer's *Niederstadt* Argument Challenging the Competency of Dr. Carothers' Causation Opinion is Without Merit

{36} Throughout the proceedings, including on appeal, Employer/Insurer relies heavily on *Niederstadt* and also *Zanio's Foods* to undermine and lessen the weight of Dr. Carothers' medical testimony regarding causation. Employer/Insurer's reliance on *Niederstadt* and *Zanio's Foods* is misplaced, particularly and critically as a means to defeat Dr. Carothers' testimony.

{37} In *Niederstadt*, this Court reversed a WCJ's award of PPD benefits after concluding that there was not substantial evidence to support the WCJ's determination that the worker had met his burden of proof as to causation. 1975-NMCA-059, ¶¶ 11, 13. In that case, the worker had suffered an injury thirteen years prior to his work-related injury. *Id.* ¶ 10. The doctor whose report was relied upon to establish causation between the work-related accident and the worker's disability had no knowledge of the prior injury. This Court held that "since pertinent information existed about which [the doctor] apparently had no knowledge, his opinion cannot serve as the basis for compliance" with Section 52-1-28's requirement that the worker establish causation through medical expert testimony. *Niederstadt*, 1975-NMCA-059, ¶ 11. As this Court more recently explained in *Zanio's Foods*, "The essence of *Niederstadt* is that a health[]care provider must be informed about a pertinent prior injury before he or she can render an opinion as to the cause of a subsequent injury." *Zanio's Foods*, 2005-NMCA-134, ¶ 14. In *Zanio's Foods*, the worker had suffered multiple prior back injuries that he failed to disclose to his health care providers whose testimony as to causation was apparently credited by the WCJ over competing expert testimony. *Id.* ¶¶ 16, 56. Notably, the worker in *Zanio's Foods* did not argue aggravation of a preexisting condition. *Id.* ¶ 7. Rather, he claimed his work-related accident "was the sole cause of the degenerative disk condition of which he complained" even though it appeared—and at times the worker even conceded—that the degenerative disk condition was preexisting. *Id.* ¶¶ 51, 56. Unlike in *Niederstadt*, where this Court reversed with instructions to enter judgment in favor of the employer, 1975-NMCA-059, ¶ 13, in *Zanio's Foods*, this Court remanded the case to the WCJ for entry of "more detailed and explanatory findings of fact and conclusions of law." *Zanio's Foods*, 2005-NMCA-134, ¶ 55. The Court made no ultimate determination as to whether the worker had met his burden of establishing causation.

{38} Here, the record evinces that Dr. Carothers possessed the pertinent information regarding Worker's preexisting condition as early as his first assessment of

Worker on July 8, 2014. On that date, Dr. Carothers noted in Worker's chart the history of Worker's present illness: "[Worker] broke his hip back in 2002 and underwent open reduction and internal fixation." As to his observations based on his examination of Worker's right hip, Dr. Carothers noted, "there has been [AVN] of the femoral head with severe collapse[,]" indicating he possessed the pertinent information that Worker's AVN was preexisting. In the notes from Worker's follow-up visit on July 17, 2014, Dr. Carothers stated that "the changes in the hip are rather chronic and I believe that the [AVN] has been long-standing and predated the injury[,]" further reinforcing his awareness of Worker's AVN prior to opining that the accident caused an aggravation of Worker's condition.

{39} Employer/Insurer argues that "[o]n cross-examination, Dr. Carothers' testimony took a turn when confronted with Workers' prior medical records" from UNMH. However, we discern no material differences between Dr. Carothers' direct and cross-examination testimony. After being presented with and reviewing Worker's UNMH records from 2006-2011, Dr. Carothers maintained:

> So like I attempted to make clear, I think [Worker's] condition of his hip relates to his initial fall in 2002. I would have expected him to have pain long before the fall in March [2014] as is demonstrated by the notes from UNM[H;] however, there is a [three]-year gap between the last UNM[H] note and the New Mexico Orthopedic notes, so he obviously didn't have a total hip replacement [and] has been making due. So the difficulty is [Worker has] been making due, he has another fall at work, now he is not making due. So it's reasonable to say that the fall could have aggravated the condition of his hip, but by [and] large his symptoms, his hip pain are stemming from the original injury.

This testimony largely mirrors Dr. Carothers' earlier testimony—and his original opinion—that Worker's accident aggravated his AVN.

{40} Employer/Insurer also attempts to undermine the weight of Dr. Carothers' testimony by pointing out that Worker was Dr. Carothers' "sole source of information as to the mechanism of his injury on March 11, 2014 as well as the progression of his symptoms" and highlighting the WCJ's finding that:

> Dr. Carothers testified in deposition that he had not reviewed any records from UNMH regarding Worker's prior hip treatment, did not review Worker's medical records from Concentra, did not review physical therapy records regarding Worker's hip, and that Worker was Dr. Carothers' only source of Worker's medical history. Dr. Carothers was unaware Worker's diagnosis of AVN dated back to at least 2008.

There are numerous problems with Employer/Insurer's line of attack. First, neither *Niederstadt* nor *Zanio's Foods* imposes a requirement that a testifying expert have reviewed all of a worker's prior medical records in order to provide a competent causation opinion. As acknowledged by Employer/Insurer, the requirement is simply that "a health[]care provider *must be informed about a pertinent prior injury* before he or she can render an opinion as to the cause of a subsequent injury." *Zanio's Foods*, 2005-NMCA-134, ¶ 14 (emphasis added). The fact that Dr. Carothers had not reviewed Worker's UNMH records is not presumptively fatal given that Dr. Carothers—unlike the experts in *Niederstadt* and *Zanio's Foods*—had been informed about Worker's pertinent prior injury by Worker himself *and* had reviewed radiographs that provided additional information, i.e., that the AVN was "long-standing." Second, the WCJ's finding that Dr. Carothers did not know when Worker's AVN was first diagnosed is of no moment here. Dr. Carothers never opined that Worker's March 2014 accident caused his AVN, only that the accident *worsened* or *aggravated* the AVN, thus hastening the need for hip replacement surgery. Even Employer/Insurer fails to explain the significance of the fact that Dr. Carothers did not know that Worker's AVN had first been diagnosed in 2008.

{41} We conclude that this case is distinguishable from both *Niederstadt* and *Zanio's Foods*. The weight of Dr. Carothers' testimony is not negatively impacted by the fact that he had not reviewed Worker's UNMH records prior to rendering his causation opinion—which he affirmed even after reviewing them at his deposition—because the record makes clear that he possessed pertinent information about Worker's prior injury when he gave his opinion.[5] To the extent the WCJ discounted the weight of—or outright rejected, as appears to be the case—Dr. Carothers' testimony based on Employer/Insurer's *Niederstadt* challenge, we hold that it was error to do so.

3. No Substantial or Competent Expert Medical Testimony Rebutted Dr. Carothers' Causation Opinion

{42} We next turn to whether other expert medical testimony contradicted Dr. Carothers' causation testimony, thereby permitting the WCJ to choose between competing opinions. If not, Dr. Carothers' testimony is binding on the WCJ and this Court. *See Banks*, 2003-NMSC-026, ¶ 35. We note that while "causation" is the ultimate issue that must be resolved, determining whether Worker's disabilities (TTD and PPD) resulted from his March 2014 accident hinges, in this case, on the narrower question of what type of injury or injuries Worker suffered. According to Worker and Dr. Carothers, the injury Worker suffered was an aggravation of Worker's preexisting AVN. According to Employer/Insurer and the WCJ, Worker suffered only a contusion to his right thigh, and Worker's preexisting AVN was unaffected by the March 2014 accident. Having already concluded that Dr. Carothers' testimony unequivocally and competently established that Worker suffered an aggravation of his preexisting AVN, and that the injury resulted in disability, we focus on whether substantial evidence supports the WCJ's express finding that "[t]he medical evidence . . . supports a [f]inding that Worker suffered a contusion to his right thigh as a result of Worker's fall from a ladder on March 11, 2014[,]" and the concomitant implied finding that Worker did *not* suffer an aggravation of his preexisting AVN. *See Trujillo v. City of Albuquerque*, 1993-NMCA-114, ¶ 13, 116 N.M. 640, 866 P.2d 368 (explaining that a reviewing court "examine[s] the record to

[5]To the extent Employer/Insurer challenges the weight of the causation opinions of Worker's treating health care providers at Concentra, Steve Cardenas, P.A., and Dr. David Lyman, we agree that Niederstadt may apply to their testimony because both related Worker's AVN—rather than an aggravation of his AVN—to the March 2014 accident. However, Employer/Insurer's attempts to discredit Cardenas's and Dr. Lyman's opinions on the basis of Niederstadt ignore the fact that Worker never claimed that his March 2014 accident caused his AVN and only serve to unnecessarily confuse matters. As explained in the preceding section, given the substance of and basis for Dr. Carothers' causation testimony, no other expert testimony was needed to establish causation, making it irrelevant whether Cardenas and Dr. Lyman had all pertinent information in rendering their opinions.

ascertain whether the [WCJ's] finding . . . is supported by substantial evidence under a whole-record standard of review"); *Jones v. Beavers*, 1993-NMCA-100, ¶ 18, 116 N.M. 634, 866 P.2d 362 (explaining that "[t]he trial court's refusal to adopt the requested findings of fact is tantamount to a finding against [the requesting party] on each of the[] factual issues"). We review the testimony of Drs. Ross and Legant, the IME panel members on whom the WCJ appears to have most heavily relied in rendering his decision. We begin by noting that the IME panel's charge was to respond to the questions formulated by the WCJ, which failed to inquire into the relevant ultimate issues in this case. As such, we must examine not only the ultimate opinions of Drs. Ross and Legant but also the basis for their opinions in order to determine whether they are sufficient as a matter of law to contradict Dr. Carothers' opinion that Worker suffered an aggravation injury. *See Trujillo*, 1993-NMCA-114, ¶¶ 14-21 (explaining that it is improper for a WCJ to rely upon opinion testimony when the basis for the opinion fails to comport with statutory definitions and standards, rendering it "incorrect as a matter of law").

Drs. Ross's and Legant's Testimony

{43} Worker directly questioned Dr. Ross about her opinion regarding whether Worker sustained an aggravation of his preexisting AVN three times during her deposition. First, when asked whether she agreed or disagreed with Dr. Carothers' opinion that Worker "suffered an aggravation of his preexisting right hip condition as a result of the fall at work in [March] 2014[,]" Dr. Ross responded:

> I'm confused by the testimony you're having me read. Because in one part of it . . . [Dr. Carothers] says that he thinks the fall resulted in an aggravation of the hip and more constant and debilitating pain, but then [in] the second part he says that [the] severity of the pain is not a result of the fall, that it's a downward spiral that started from a fracture in 2002 and, quote, but I believe that his hip was in end-stage arthritis related to [AVN] prior to the fall, end quote. So I find—I'm unable to answer your question because I find what he says contradictory.

Next, when asked if it was her testimony that Worker's "right hip symptoms did not worsen as a result of the fall at work[,]" Dr. Ross never directly answered the question. Instead she responded:

> I think we're confusing the term hip symptoms—or using the term 'hip symptoms' very loosely. What I'm saying is that I think that the fall caused him to have a contusion to his leg, his thigh, but I think that the actual problem, his pain now and the resultant recommendation for surgery, is due to the fact that he had end-stage [AVN]. . . . I do not believe that the fall caused an end-stage problem to become worse because he was already at end stage. I think that this is a natural progression of his disease and of the diagnosis and that he was ultimately going to need a hip replacement which was recommended as far back as 2008.

Finally, when asked again to comment on Dr. Carothers' opinion that "the fall aggravated [Worker's preexisting AVN] and worsened the pain," Dr. Ross stated:

> I do not agree with [that] . . . because the patient was already at end stage. You can't get any further than end stage. There's no joint left. The femoral head is gone. It just doesn't happen. Actually, if you look at the X-rays, you don't see a change in the X-rays. The X-rays were bad before the fall. They were the same after the fall.

Regarding whether Worker's preexisting AVN could have been aggravated by the March 2014 fall, Dr. Legant testified that "[y]ou can't get really worse than 'end-stage arthritis.' . . . It means you're at the end of the line. The treatment is basically a hip replacement, indicating that at some point in time prior to [Worker's] fall it's as bad as it's going to get." We consider the effect of this testimony.

{44} Dr. Ross's first response fails to unequivocally contradict Dr. Carothers' testimony that Worker suffered an aggravation injury. Dr. Ross stated that she was "unable to answer" Worker's question whether she agreed or disagreed with Dr. Carothers' aggravation injury opinion because she found his statements contradictory. Setting aside the fact that there is nothing inherently contradictory about Dr. Carothers' opinion that the severity of Worker's preexisting condition could be traced to his 2002 fall from a tree rather than his 2014 fall from a ladder, and at the same time that Worker's 2014 fall aggravated and worsened his already-severe condition, Dr. Ross's response to Worker's first question fails to address the ultimate question posed and thus may not be afforded substantial weight. *See Trujillo*, 2016-NMCA-041, ¶ 39.

{45} We consider Dr. Ross's second and third responses together with Dr. Legant's because doing so illuminates the fatal flaw in the reasoning that underpins both their opinions. What is evident from Drs. Ross's and Legant's explanations is that they applied an incorrect standard for determining whether Worker suffered an "aggravation" of a preexisting injury under New Mexico workers' compensation law. Applying what appears to be the medical standard for determining "aggravation," Dr. Ross concluded that Worker's end-stage arthritis could not "get any further" because there was already "no joint left[,]" meaning that aggravation was a medical impossibility, which opinion was echoed by Dr. Legant. Yet it is well established in New Mexico law that experiencing increased pain is sufficient to constitute aggravation of a preexisting condition and thus a compensable injury, *Tom Growney*, 2005-NMSC-015, ¶ 53, and that there need not be "physical tissue change for there to be a compensable disability." *Schober*, 1980-NMCA-113, ¶ 8. Additionally, this Court made clear in *Edmiston* that even where a preexisting condition "cannot be described as being worse because of the workplace injury"—as in the case of an incurable disease—causation is not automatically defeated. 1997-NMCA-085, ¶ 23. Contrary to Drs. Ross's and Legant's mistaken belief, Worker was not required to show a *medical* aggravation—i.e., physiological deterioration—of his condition in order to establish that he had suffered an aggravation-type injury, but only that the "work-related accident aggravate[d] the preexisting condition by changing the course of the ailment or its treatment[.]" *Id.* 1997-NMCA-085, ¶ 38 (Hartz, C. J., concurring in part, dissenting in part). We next examine Drs. Ross's and Legant's testimony in light of this correct standard.

{46} By Drs. Ross's and Legant's own admissions, the treatment of Worker's condition—and arguably also its course—had changed following the March 2014 accident. Specifically, Dr. Ross conceded that for three years preceding the accident, Worker had not sought treatment or been prescribed pain medication for his hip; that Worker's complaints of pain in his hip only resurfaced after the March 2014 accident; that Worker had never been prescribed the use of a cane or walker prior to the March 2014 accident; and that Worker's mobility decreased after the March 2014 accident. Dr. Ross also

acknowledged that Worker's preexisting condition had not prevented him from working prior to March 2014 and that Worker had not missed any work prior to the accident. Dr. Legant made similar concessions and also agreed that Worker "had varying levels of functioning that he was performing despite the fact that he had a degenerative right hip" and that Worker's "functioning only declined after the work accident in 2014[.]" Thus, the undisputed expert testimony established that prior to the accident, Worker: (1) had not required use of prescription medication to manage his pain in three years; (2) worked at full duty, never missing work because of his preexisting condition; and (3) did not need to use a cane. It further established that after the accident, Worker: (1) experienced worsening pain that required prescription medication for management; (2) became unable to work within a short period of time due to his increased pain; (3) required use of a cane; and (4) experienced decreased mobility. In other words, as a natural and direct result of his accident, both Worker's medical treatment (prescription of pain medication and a cane) and the course of his ailment (non-disabling AVN to disabling aggravated AVN) changed.

The Evidence Does Not Support the WCJ's Findings

{47} We conclude that Drs. Ross's and Legant's testimony fails to provide substantial evidence to support the WCJ's implicit finding that Worker did not suffer an aggravation injury. Specifically, their testimony fails to establish either (1) that it was "more likely than not" that Worker's current disability resulted from his preexisting condition, *Molycorp*, 1985-NMCA-067, ¶ 16, or (2) that the current effects of Worker's preexisting AVN are "identifiably separate and unrelated" to Worker's March 2014 accident. *Edmiston*, 1997-NMCA-085, ¶ 17. It also fails, as a matter of law, to contradict Dr. Carothers' opinion that Worker suffered an aggravation injury because any seemingly contradictory causation testimony offered by Drs. Ross and Legant is negated by their application of the wrong legal standard. *See Trujillo*, 1993-NMCA-114, ¶ 15. In effect, to affirm we would have to conclude that Worker would have become disabled on July 12, 2014, even if he had not fallen from a ladder just four months before. There is no evidence whatsoever in the record to support such a conclusion.

{48} Moreover, we observe that the standard by which Drs. Ross and Legant and the WCJ would measure "aggravation" not only is contrary to well-established workers' compensation law but also would frustrate the Legislature's intent and our state's goal of encouraging workers to work and return to gainful employment following an injury. *See Perez v. Int'l Minerals & Chem. Corp.*, 1981-NMCA-022, ¶ 14, 95 N.M. 628, 624 P.2d 1025 ("We have often commended workmen who want to work, who do not play the part of Rip Van Winkle. We support a workman who continues in his employment or obtains other employment despite his disability."). As evidenced by this case, even workers with end-stage conditions and dismal medical diagnoses are capable of maintaining gainful employment and contributing to New Mexico's workforce. Such workers should be commended for their perseverance and fully compensated in accordance with the provisions of the Act when, as a result of their choice to work rather than become dependent upon the public welfare, they suffer an on-the-job injury resulting in the discernable worsening of a preexisting condition. The prevailing rule in New Mexico that "the employer takes the employee as it finds that employee" applies in full force here: Employer/Insurer "found" Worker with a preexisting "bad hip" condition—which Worker forthrightly disclosed to Employer in 2008—and nevertheless elected to keep him in its employ. *Edmiston*, 1997-NMCA-085, ¶ 25 (internal quotation marks and citation omitted). Particularly in light of Mr. Reetz's testimony that he believed Worker to be an "honest individual" who did "good work" and was "a dependable employee," it hardly seems unfair to hold Employer/Insurer to the long-standing rule that where "a person suffers an accidental injury growing out of and in the course of his employment he is entitled to be compensated for his disability as it thereafter existed, notwithstanding the disability would not have been so great had he not been suffering from a pre[]existing condition at the time of the injury." *Reynolds*, 1961-NMSC-116, ¶ 31.

{49} Because we hold that there is not substantial evidence to support the WCJ's implicit finding that Worker did not suffer an aggravation injury, and because the WCJ's award of benefits was limited by his finding that Worker only suffered a contusion injury, we remand this case in order for the WCJ to reconsider and determine the benefits to which Worker may be entitled in light of our holding. As this Court has previously cautioned, the WCJ and the parties must take "exceptional care" to "adequately cover the questions raised" in cases such as this that involve complicated questions of law regarding accidental injuries and possible aggravation of preexisting conditions. *Zanio's Foods*, 2005-NMCA-134, ¶¶ 54, 57. Failure to differentiate such interwoven issues at the outset of litigation lends itself to the possibility of flawed proceedings and misidentification of applicable analyses. On remand, the WCJ is instructed to apply the distinct standards discussed herein to determine whether Worker is entitled to additional benefits—both disability and medical—and any costs and fees stemming from his aggravation injury.

II. Whether Employer/Insurer Prematurely Received Attorney Fees Contrary to Section 52-1-54(M)

{50} Worker argues that Section 52-1-54(M) of the Act prohibits payment of attorney fees before a case is adjudged and that there is evidence that Employer/Insurer sought and was paid attorney fees on three occasions prior to the filing of the WCJ's compensation order in this case. Worker contends that a bad faith penalty and/or an increase in Worker's benefits is the proper way to cure this violation. Worker explains that he "requested a separate hearing on the issue of bad faith" and states that "[t]he WCJ declined to address this issue in the [c]ompensation [o]rder." But the joint pretrial order issued by the WCJ and agreed to by the parties clearly provides that Worker's bad faith claim was to be addressed "[a]fter trial and in a separate hearing[.]" Finding no indication in the record that a separate hearing on Worker's bad faith claim has been held or that a final order has issued therefrom, we decline to reach the merits of this issue for lack of jurisdiction. *See* NMSA 1978, § 52-5-8(A) (1989) ("Any party in interest may, within thirty days of mailing of the final order of the [WCJ], file a notice of appeal with the court of appeals."); *cf. Capco Acquisub, Inc. v. Greka Energy Corp.*, 2007-NMCA-011, ¶ 17, 140 N.M. 920, 149 P.3d 1017 ("[O]ur appellate jurisdiction is limited to review of any final judgment or decision, any interlocutory order or decision which practically disposes of the merits of the action, or any final order after entry of judgment which affects substantial rights." (alteration, internal quotation marks, and citation omitted)).

CONCLUSION

{51} For the foregoing reasons, we reverse and remand this case to the WCA for additional evaluation of any benefits, costs, and fees to which Worker may be entitled in light of this opinion.

{52} IT IS SO ORDERED.
J. MILES HANISEE, Judge

WE CONCUR:
JAMES J. WECHSLER, Judge
JONATHAN B. SUTIN, Judge`

Classified

Positions

Associate Litigation Attorney

We are a small, aggressive, successful Albuquerque-based complex civil commercial and tort litigation firm with a need for an associate litigation attorney who is extremely hard working and diligent, with great academic credentials and legal acumen, really gets it, and is interested in a long term future with this firm. A terrific opportunity for the right lawyer. Experience of 3 years-plus is preferred. Send resumes, writing samples, and law school transcripts to Atkinson, Baker & Rodriguez, P.C., 201 Third Street NW, Suite 1850, Albuquerque, NM 87102 or e_info@abrfirm.com. Please reference Attorney Recruiting.

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Reporting to the Senior Vice President and General Counsel, this in-house position provides legal advice and assistance on complex and routine legal matters, primarily related to litigation, but also including matters of health law, involving Healthcare Services (PHS) and Health Plan. Litigation matters may include Federal and State law. AA/EOE/VET/DISABLED. Preferred qualifications include 15 years of experience as an attorney, with experience in the health care field and medical malpractice area. To Apply: http://tinyurl.com/ycrdkub6 (requisition #11206)

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Trial Attorney wanted for immediate employment with the Ninth Judicial District Attorney's Office, which includes Curry and Roosevelt counties. Must be admitted to the New Mexico State Bar. Salary will be based on the NM District Attorneys' Personnel & Compensation Plan and commensurate with experience and budget availability. Email resume, cover letter, and references to: Steve North, snorth@da.state.nm.us.

Attorney

The Albuquerque office of Lewis, Brisbois, Bisgaard & Smith LLP is seeking a high energy attorney with five years of litigation experience to join our General Liability Practice Group. In addition to five years of litigation experience, successful candidates must have credentials from an ABA approved law school, and must currently be licensed to practice in NM. This is a great opportunity to work in a collegial local office of a national firm. Please submit a cover letter, resume, and two writing samples via email to stephanie.reinhard@lewisbrisbois.com.

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Caruso Law Offices, an ABQ plaintiff personal injury/wrongful death law firm has an immediate opening for associate with 2+ yrs. litigation experience. Must have excellent communication, organizational, and client services skills. Good pay, benefits and profit sharing. Send confidential response to Mark Caruso, 4302 Carlisle NE, ABQ NM 87107.

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CJA Panel Coordinating Attorney
2018-04

The Federal Public Defender for the District of New Mexico is seeking a full-time attorney to serve as the Criminal Justice Act (CJA) Panel Coordinating Attorney for the District of New Mexico. The CJA Panel Coordinating Attorney will work closely with the Courts, the Federal Public Defender and the Defender Services Office to improve the quality of representation and the efficient management of the CJA Panel. Duties will include providing training and assistance to CJA Panel attorneys, assisting CJA Panel attorneys and the Court with the efficient processing of vouchers for reimbursement, and other duties as assigned consistent with the mission of the position. The CJA Panel Coordinating Attorney eventually will be required to supervise other staff in carrying out these functions. This is a full-time FPD staff attorney position that will not permit court appearances or the private practice of law. Applicants must have an the following qualifications: an established working knowledge and demonstrated command of federal criminal law; at least five years' experience practicing federal criminal law; significant experience working under the Criminal Justice Act; proficient data management and automation skills. The successful applicant also must be a self-starter with a positive work ethic, a reputation for personal and professional integrity, and an ability to work well with the Court, the Federal Public Defender, the Defender Services Office and members of the CJA Panel. There is a preference for applicants who have substantial experience billing under the Criminal Justice Act. Applicants must be a graduate of an accredited law school, licensed by the highest court of a state, federal territory, or the District of Columbia; be a member in good standing in all courts where admitted to practice; and be a U.S. citizen or person authorized to work in the United States and receive compensation as a federal employee. Selected applicants will be subject to a background investigation. Salary commensurate with experience. The Federal Public Defender operates under the authority of the Criminal Justice Act, 18 U.S.C. § 3006A. The Federal Public Defender is an equal opportunity employer. Direct deposit of pay is mandatory. In one PDF document, please submit a statement of interest and detailed resume of experience with three references to: Stephen P. McCue, Federal Public Defender; FDNM-HR@fd.org Reference 2018-04 in the subject line. Applications must be received by April 16, 2018. The position will remain opened until filled and is subject to the availability of funding. No phone calls please. Only those selected for an interview will be contacted.

Staff Attorney

The New Mexico Environmental Law Center, a nonprofit public interest law office seeks an attorney to represent New Mexico's communities, environmental groups, indigenous communities and tribal governments in their efforts to protect their air, land, water and public health. Responsibilities include advocating for clients in local, state and federal forums. Our casework is throughout New Mexico. Minimum of five years of experience, including litigation before administrative agencies and courts required. New Mexico bar membership and experience in water law preferred. Competitive nonprofit salary DOE and generous benefits. The Law Center is an equal opportunity employer. Send a cover letter, resume, writing sample and three references to Yana Merrill at ymerrill@nmelc.org or 1405 Luisa Street, Suite 5, Santa Fe, N.M 87505. Applications will be received until the position is filled. No telephone calls please. Further details available at www.nmelc.org.

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The Third Judicial District Attorney's Office is accepting applications for a Trial Attorney in the Las Cruces Office. Requirements: Licensed attorney in New Mexico, plus a minimum of two (2) years as a practicing attorney, or one (1) year as a prosecuting attorney. Salary will be based upon experience and the District Attorney's Personnel and Compensation Plan. Position open until filled. Please send interest letter/resume to Whitney Safranek, Human Resources Administrator, 845 N Motel Blvd., Suite D, Las Cruces, New Mexico 88007 or to wsafranek@da.state.nm.us. Further description of this position is listed on our website http://donaanacountyda.com/.

Attorney

The Pantex Plant in Amarillo, TX is looking for an Attorney with well-developed counseling, investigative, and negotiation skills who has at least five years of experience representing employers in private practice or in a corporate law department as labor and employment counsel. Candidates must possess strong interpersonal, writing, and verbal skills, the ability to manage simultaneous projects under deadline, and flexibility to learn new areas of law. Candidates must be licensed to practice law in at least one state and must be admitted, or able to be admitted, to the Texas bar. For more information on the position please visit www.pantex.energy.gov, Careers, Current Opportunities and reference Req #18-0273 (Legal General Sr. Associate-Specialist). Pantex is an equal opportunity employer.

Associate Attorney

Rio Rancho law firm has an immediate opening for an associate attorney interested in the practice of real estate and municipal law. Minimum of three years transactional real estate practice experience preferred. Please submit a resume and writing sample to P. O. Box 15698, Rio Rancho, NM 87174 or via email to ms@lsplegal.com. All replies kept confidential.

13th Judicial District Attorney Senior Trial Attorney, Trial Attorney, Assistant Trial Attorney Cibola, Sandoval, Valencia Counties

Senior Trial Attorney - Requires substantial knowledge and experience in criminal prosecution, as well as the ability to handle a full-time complex felony caseload. Trial Attorney - Requires misdemeanor and felony caseload experience. Assistant Trial Attorney - May entail misdemeanor, juvenile and possible felony cases. Salary is commensurate with experience. Contact Krissy Saavedra KSaavedra@da.state.nm.us or 505-771-7411 for application.

Attorney at Law (1-4 years of experience)

Giddens, Gatton & Jacobus, P.C., a dynamic and growing law firm in Albuquerque, NM, has an immediate opening for an attorney with 1-4 years of experience to join its bankruptcy, commercial litigation, real estate and personal injury practice. The successful candidate will be talented and ambitious with excellent academic performance. Attorney to interact with clients and provide advice, legal research, writing, drafting pleadings and briefs, and prepare for court and or make supervised court appearances. Must thrive in a team environment and believe that client service is the most important mission of an attorney. Skills and abilities: Excellent oral and written interpersonal & communication skills; Strong analytical, logical reasoning and research skills; Strong organizational and time management skills; Strong customer service and personal service orientation; Strong knowledge of the law and legal precedence; Ability to use Lexis, MS Office and other computer programs. TO APPLY: Please email cover letter, resume, law school transcript & writing sample to Denise DeBlassie-Gallegos, at giddens@giddenslaw.com. DO NOT CONTACT OUR OFFICE DIRECTLY BY PHONE; EMAIL ONLY.

Associate Attorney

Hatcher Law Group, P.A. seeks an Associate Attorney with four-plus years of legal experience for our downtown Santa Fe office. We are looking for an individual motivated to excel at the practice of law in a litigation-focused practice. Hatcher Law Group defends individuals, state and local governments and institutional clients in the areas of insurance defense, coverage, workers compensation, employment and civil rights. We offer a great work environment, competitive salary and benefit package. Send your cover letter, resume and a writing sample via email to juliez@hatcherlawgroupnm.com.

Paralegal/Project Coordinator

The State Bar of New Mexico seeks a full-time Paralegal/Project Coordinator. The successful applicant must have excellent communication skills (both verbal and written), excellent computer skills (MS Word, Excel, PowerPoint, etc.) and be organized. Minimum education required is an Associate's degree, Bachelor's degree preferred. Compensation $16.00-$18.00 per hour DOE, plus excellent benefits. Email letter of interest and resume to hr@nmbar.org.

Paralegal

Hatcher Law Group, PA seeks a Paralegal with three plus years civil litigation experience (i.e. insurance defense, workers compensation, employment and civil rights) for our downtown Santa Fe office. We are looking for a motivated individual who is well organized, detail oriented and a team player. Proficiency in Word, Microsoft 365, Westlaw and Adobe Pro. Part/Full Time available. Salary contingent upon experience, plus benefit package. Send your cover letter and resume via email to juliez@hatcherlawgroupnm.com

Administrative Assistant

Team, Talent, Truth, Tenacity, Triumph. These are our values. Duties include: Work together with the Administrator as a team to keep the office running smoothly. Assist the Administrator in her outcomes by performing various administrative tasks related to running of the office. Manage the building by: ordering supplies; communicating with office vendors; ensuring equipment and services are completed; IT liaison. Assist in bookkeeping tasks such as Accounts Payable entries. Various other tasks such as filing, and party-planning. Assist in scheduling meetings and travel arrangements for the attorneys. Possible assistance with marketing projects. We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. What it takes to succeed in this position: Organization, following directions, being proactive, ability to work on multiple projects, ability to listen and ask questions, intrinsic desire to achieve, no procrastination, desire to help team, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in providing support to the Administrator. Obviously, work ethic, character, and good communication are vital in a law firm. Barriers to success: Lack of organization. Lack of drive and confidence, inability to ask questions, lack of fulfillment in role, procrastination, not being focused, too much socializing, taking shortcuts, excuses. Being easily overwhelmed by information, data and documents. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at https://goo.gl/forms/Bo45QLhoTop6pkZy2. Emailed applications will not be considered.

Director of First Impressions/ Receptionist/Legal Assistant

Director of First Impressions/Receptionist/ Legal Assistant needed for growing plaintiffs personal injury law firm. Great pay, and a great environment, for a GREAT MIND AND ATTITUDE. Mission: To warmly and compassionately greet callers and visitors, making them feel welcome and comfortable. To make the best first, continued, and lasting impression on clients and all visitors and callers, including lawyers, doctors and other providers, witnesses, court reporters, insurance adjusters, etc. To create raving fan clients, and help the business and law practice grow and thrive. This position will provide support to our current receptionist. You will also be helping as a Legal assistant. These duties include: supporting 8 paralegals in the form of drafting basic form letters, scanning, creating mediation/arbitration notebooks, efiling, compiling enclosures and sending out letters/demand packages, follow up phone calls with clients, providers, and vendors, IPRA requests and monitoring. What it takes to succeed in this position: Intelligence, able to handle and transfer multiple calls, warm personality, great phone voice, welcoming appearance, able to think ahead, common sense, able to diffuse a heated situation, obtaining accurate information for messages, desire to help team and client, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in managing the front desk, and being the firm's first impression. Other qualities required to succeed: Organization, decision making, being proactive, ability to work on multiple projects, ability to listen and ask questions, intrinsic desire to achieve, no procrastination, desire to help team and client, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in managing and filing documents and data. Obviously, work ethic, character, and good communication are vital in a law firm. Barriers to success: Struggling with database, unable to handle stress, guessing instead of asking, not looking for tasks to complete between calls, unprofessional appearance, lack of fulfillment in role. Thin skin. Being easily overwhelmed by a fast pace and multiple callers and/or visitors, or by information, data and documents. Lack of drive and confidence, procrastination, not being focused, too much socializing, taking shortcuts, excuses. We will train someone just out of school. We need to see superior grades, or achievement and longevity in prior jobs. 8-5 M-F. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at https://goo.gl/forms/Bo45QLhoTop6pkZy2. Emailed applications will not be considered.

Paralegal

Team, Talent, Truth, Tenacity, Triumph. These are our values. Mission: To work together with the attorneys as a team to provide clients with intelligent, compassionate and determined advocacy, with the goal of maximizing compensation for the harms caused by wrongful actions of others. To give clients and files the attention and organization needed to help bring resolution as effectively and quickly as possible. To make sure that, at the end of the case, the client is satisfied and knows Parnall Law has stood up for, fought for, and given voice and value to his or her harm. Success: Litigation experience (on plaintiff's side) preferred. Organized. Detail-oriented. Meticulous but not to the point of distraction. Independent / self-directed. Able to work on multiple projects. Proactive. Take initiative and ownership. Courage to be imperfect, and have humility. Willing / unafraid to collaborate. Willing to tackle the most unpleasant tasks first. Willing to help where needed. Willing to ask for help. Acknowledging what you don't know. Eager to learn. Integrate 5 values of our team: Teamwork; Tenacity; Truth; Talent; Triumph. Compelled to do outstanding work. Know your cases. Work ethic; producing Monday – Friday, 8 to 5. Barriers to success: Lack of fulfillment in role. Treating this as "just a job." Not enjoying people. Lack of empathy. Thin skinned to constructive criticism. Not admitting what you don't know. Guessing instead of asking. Inability to prioritize and multitask. Falling and staying behind. Not being time-effective. Unwillingness to adapt and train. Waiting to be told what to do. Overly reliant on instruction. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at https://goo.gl/forms/Bo45QLhoTop6pkZy2. Emailed applications will not be considered.

Legal Assistant

Team, Talent, Truth, Tenacity, Triumph. These are our values. Legal assistant duties include support to 8 paralegals in the form of drafting basic form letters, scanning, creating mediation/arbitration notebooks, efiling, compiling enclosures and sending out letters/ demand packages, follow up phone calls with clients, providers, and vendors, IPRA requests and monitoring. We are a growing plaintiffs personal injury law firm. Candidate must be enthusiastic, confident, a great team player, a self-starter, and able to multi-task in a fast-paced environment. What it takes to succeed in this position: Organization, decision making, being proactive, ability to work on multiple projects, ability to listen and ask questions, intrinsic desire to achieve, no procrastination, desire to help team and client, willing and glad to help wherever needed, offering assistance beyond basic role, focus, motivation, and taking ownership of role. You must feel fulfilled by the importance of your role in managing and filing documents and data. Obviously, work ethic, character, and good communication are vital in a law firm. Barriers to success: Lack of drive and confidence, inability to ask questions, lack of fulfillment in role, procrastination, not being focused, too much socializing, taking shortcuts, excuses. Being easily overwhelmed by information, data and documents. If you want to be a part of a growing company with an inspired vision, a unique workplace environment and opportunities for professional growth and competitive compensation, you MUST apply online at https://goo.gl/forms/Bo45QLhoTop6pkZy2. Emailed applications will not be considered.

Immediate for Experienced Santa Fe Legal Secretary

The Frith Firm needs a bright, conscientious, hardworking, meticulous and (5+ years) legal secretary. You will have very substantial client contact. You must have excellent writing, communication and organizational skills. Our work is computer intensive, informal, non-smoking and a fun place to work. We are all on the same team, and we want another 'team player'. Excellent salary + monthly bonus, paid holidays + sick and personal leave, and other benefits based upon 1 year tenure. All responses are strictly confidential. Please send your Resume with a cover letter to thefrithfirm@gmail.com.

Positions Wanted

Legal Asst/Paralegal Seeks Immediate FT Employment

Desire to work in Personal Injury area of law. Strong Work Ethic. Integrity. Albq./RR area only. Over 5 yrs exp. E-file in State & Fed Courts. Calendaring skills. Med Rec. Rqsts & Organization. Please contact 'legalassistantforhire2017@gmail.com ' for resume/references.

Services

Attention Foreclosure Attorneys

Experienced Court Appointed Receiver. Responsible for Assets up to $16 Million. Hotels, Offices, Apartments, Retail. Attorney References Available. Larry Levy 505.263.3383

Office Space

Nob Hill Office Building

3104 Monte Vista Blvd. NE. 1,200 sf sweet remodel a block off Central. Two private offices, large staff area, waiting room, full kitchen, 3/4 bath, hardwood floors, 500 sf partial finished basement, tree-shaded yard, 6 off-street parking spaces. $1,400 per month with one-year lease. Call or email Beth Mason at 505-379-3220, bethmason56@gmail.com

620 Roma N.W.

The building is located a few blocks from Federal, State and Metropolitan courts. Monthly rent of $550.00 includes utilities (except phones), fax, copiers, internet access, front desk receptionist, and janitorial service. You'll have access to the law library, four conference rooms, a waiting area, off street parking. Several office spaces are available. Call 243-3751 for an appointment.

Shared Office Space Available – Highly Desirable Uptown Location

Beautifully furnished and spacious office suite includes your choice of 2 available large window offices and 2-3 available interior offices. Rent includes; access to 2 spacious and beautiful conference rooms, phones, fax service, internet, copy machine, janitorial service, large waiting area, kitchenette and garage parking. Class A space. Rent ranges $1,000 to $2,000 per month dependent space selections. Contact Nina at 505-889-8240 for more details.

-State Bar of New Mexico-

2018 Annual Meeting

Hyatt Regency
TAMAYA RESORT & CASINO
Santa Ana Pueblo

Aug. 9-11

Reserve your hotel room today!

Rates start at $179/night at the Hyatt Regency Tamaya Resort & Casino. Visit **www.nmbar.org/AnnualMeeting** for details about the Annual Meeting and our discounted room block.

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The Texas Tech University School of Law continues to show their support of the State Bar of New Mexico as the proud sponsor of the 2018 Red Raider Hospitality Lounge!

State Bar of New Mexico

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