

BAR BULLETIN

November 13, 2019 • Volume 58, No. 23



Retreating Snow, by John Meister (see page 3)

Purple Sage Gallery and Warren Fine Art,
Old Town, Albuquerque

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CLE Planner

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from the
Center for Legal Education*

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Collaborative divorce

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Preparing of proof of loss for insurance claims due to employee theft or fraud

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Meetings

November

- 13**
Children's Law Section Board
Noon, Children's Court, Albuquerque
- 13**
Tax Section Board
11 a.m., teleconference
- 14**
Business Law Section Board
4 p.m., teleconference
- 15**
Family Law Section Board
9 a.m., teleconference
- 19**
Solo and Small Firm Section Board
11 a.m., State Bar Center
- 21**
Elder Law Section Board
Noon, State Bar Center
- 21**
Public Law Section Board
Noon, Legislative Finance Committee, Santa Fe
- 22**
Immigration Law Section Board
Noon, teleconference

Workshops and Legal Clinics

November

- 13**
Common Legal Issues for Senior Citizens Workshop
Presentation: 10-11:15 a.m. POA/AHCD
Workshop: 11:30 a.m.-12:30 p.m., Mora Senior Center, Mora, (505) 797-6005
- 15**
Roswell Legal Fair
1-4 p.m., Roswell Adult Center, Roswell
505-216-2939
- 20**
Family Law Clinic
10 a.m.-1 p.m., Second Judicial District Court, Albuquerque, 1-877-266-9861

December

- 4**
Divorce Options Workshop
6-8 p.m., State Bar Center, Albuquerque, 505-797-6022
- 11**
Consumer Debt/Bankruptcy Workshop
6-9 p.m., State Bar Center, Albuquerque, 505-797-6094

About Cover Image and Artist: John Meister graduated from the University of Texas at Austin with a B.A. in Art and began his career with 23 years in commercial graphic design and illustration, shifting to full-time painting in 2009. Living in New Mexico since 1990, he paints primarily in oils, both in his Albuquerque studio and en plein air and often explores ways to depict the unique character of the beautiful Southwest. When he feels that his "muse" is hiding, he first looks for it in an art museum or gallery. He is always inspired by those visual historians that came before and left behind something to admire. Meister volunteers with several art organizations, including Plein Air Painters of New Mexico, and he occasionally teaches at the New Mexico Art League in Albuquerque. His work can be found in collections across the Southwest. To view more of his work, visit www.johnmeisterart.com.

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov/>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do>.

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources, including free in-house use of Westlaw, LexisNexis, and HeinOnline. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building Hours: Monday-Friday 8 a.m.-5 p.m. Reference & Circulation Hours: Monday-Friday 8:00 a.m.-4:45 p.m. For more information call 505-827-4850, email libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Eighth Judicial District Court Judicial District Court Nominating Commission

Seven applications were received in the Judicial Selection Office as of 5 p.m., Oct. 16, for the Judicial Vacancy in the Eighth Judicial District Court due to the retirement of the Honorable Jeff Foster McElroy effective Oct. 31. The Eighth Judicial District Nominating Commission will meet at 9 a.m. on Nov. 1 at the Taos District County Courthouse, located at 105 Albright Street, Taos to evaluate the applicants for this position. The commission meeting is open to the public. Those wishing to make public comment are requested to be present at the opening of the meeting. The names of the applicants in alphabetical order: Timothy Roland Hasson, Lisa Beth Jenkins, Floyd William Lopez, Elizabeth Ann Musselman, Jeffery Alan Shannon, Elizabeth Jacqueline Travis and Morgan Holly Wood.

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

The U.S. District Court for the District of New Mexico will be closed Nov. 28-29 for the Thanksgiving holiday. Court will resume on Dec. 2. After-hours access to CM/ECF will remain available as regularly scheduled. Stay current with the United

Professionalism Tip

With respect to opposing parties and their counsel:

I will be courteous and civil, both in oral and in written communications.

States District Court for the District of New Mexico by visiting the Court's website at: www.nmd.uscourts.gov.

Eleventh Judicial District Court

Suspension of Subsection (C) of Local Rule LR11-302

LR11-302 (C) states: "As a sanction for all other technical violations, the probationer shall be incarcerated for five days." The judges of the Eleventh Judicial District Court have decided that effective immediately, subsection (C) of LR11-302 is suspended indefinitely. The remainder of LR11-302 remains in effect.

Bernalillo County Metropolitan Court Volunteers are Needed for Legal Clinics

The Legal Services and Programs Committee of the State Bar and the Bernalillo County Metropolitan Court hold a free legal clinic from 10 a.m. until 1 p.m. the second Friday of every month. Attorneys answer legal questions and provide free consultations at the Bernalillo County Metropolitan Court, 9th Floor, 401 Lomas Blvd NW, in the following areas of law: landlord/tenant, consumer rights, emnd-employee wage disputes, debts/bankruptcy, trial discovery preparation. Clients will be seen on a first-come, first-served basis and attendance is limited to the first 25 persons.

New Mexico Court of Appeals Election Announcement

The judges of the Court of Appeals selected J. Miles Hanisee as their Chief Judge on Oct. 7. A member of the COA since 2011, Judge Hanisee was most recently retained by voters in 2018. He previously served as an Assistant United States Attorney for over a decade, as a law clerk to two 10th Circuit judges, and was in private practice when appointed to the COA. He earned degrees from Pepperdine University School of Law and Louisiana State University.

STATE BAR NEWS

New Mexico Judges and Lawyers Assistance Program Attorney Support Groups

- Nov. 18, 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.) Tele-conference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- Dec. 2, 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.) Tele-conference participation is available. Dial 1-866-640-4044 and enter code 7976003#.
- Dec. 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.) Tele-conference 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.

Board of Editors Seeking Applications for Open Positions

The Board of Editors of the State Bar of New Mexico will have open positions beginning Jan. 1, 2020. Both lawyer and non-lawyer positions are open. The Board of Editors meets at least four times a year (in person and by teleconference), reviewing articles submitted to the *Bar Bulletin* and the quarterly *New Mexico Lawyer*. This volunteer board reviews submissions for suitability, edits for legal content and works with authors as needed to develop topics or address other concerns. The Board's primary responsibility is for the *New Mexico Lawyer*, which is generally written by members of a State Bar committee, section or division about a specific area of the law. The State Bar president, with the approval of the

Board of Bar Commissioners, appoints members of the Board of Editors, often on the recommendation of the current Board. Those interested in being considered for a two-year term should send a letter of interest and résumé to Evann Kleinschmidt at ekleinschmidt@nmbar.org. Apply by Dec. 1.

Board of Bar Commissioners Appointment to New Mexico Legal Aid Board

The Board of Bar Commissioners will make one appointment to the New Mexico Legal Aid Board for a three-year term from one of the Congressional Districts. Active status members wishing to serve on the Board should send a letter of interest and brief resume by Dec. 1 to Kris Becker at kbecker@nmbar.org or fax to 505-828-3765.

Pro-Bono Opportunities Seeking Volunteer Arbitrators

The State Bar's Fee Arbitration Program provides attorneys and clients with an out-of-court method of resolving fee disputes. Volunteer arbitrators review case materials, hold hearings and issue awards. For more information or to volunteer, visit nmbar.org/feearbitration.

Employee Assistance Program Managing Stress Tool for Members

The Solutions Group, the State Bar's free Employee Assistance Program, announces a new platform for managing stress. My Stress Tools is an online suite of stress management and resilience-building resources which includes: training videos, relaxation music, meditation, stress tests, a journaling feature and much more. My Stress Tools helps you understand the root causes of your stress and gives you the help you need to dramatically reduce your stress and build your resilience. Your Employee Assistance Program is available to help you, 24/7. Call at 866-254-3555.

Solo and Small Firm Section 2019 Annual Meeting

The Solo and Small Firm Section will host their Annual Meeting at 4 p.m. on Dec. 16. Section members are invited to attend the annual meeting to hear what the section has done in 2019 and the exciting plans for 2020. Refreshments and appetizers will be provided. The meeting will be preceded by a CLE co-sponsored

by the section that will run from 3 – 4 p.m. Members can attend in person, attend the CLE and then stay on via webcast, or call-in via teleconference. To R.S.V.P. for the meeting, please email Member Services at memberservices@nmbar.org.

New Mexico Judges and Lawyers Assistance Program Santa Fe Attorney Support Group Meeting

The new attorney support group, Recovery Responsibilities, explores non-traditional recovery approaches, and has a focus on meditation and other creative tools in support of the recovery process from addiction of any kind. It meets from noon to 1 p.m. the first and third Wednesday of every month at the District Courthouse, 225 Montezuma Ave, Room 270. For more information, contact Victoria Amada, vamada@nmag.gov, 505- 620-7056.

Natural Resources, Energy and Environment Law Section Section Nominations Open for 2019 Lawyer of the Year Award

The Natural Resources, Energy and Environmental Law Section will recognize an NREEL Lawyer of the Year during its annual meeting of membership, which will be held in conjunction with the Section's CLE on Dec. 20. The award will recognize an attorney who, within his or her practice and location, is the model of a New Mexico natural resources, energy or environmental lawyer. Award criteria and nomination instructions are available at www.nmbar.org/NREEL. Nominations are due by Nov. 15 to Member Services at memberservices@nmbar.org.

Minimum Continuing Legal Education Compliance Deadline Approaching

Dec. 31 is the last day to complete 2019 Minimum Continuing Legal Education requirements. Jan. 31, 2020, is the last day to submit 2019 credits without penalty. For a list of upcoming MCLE approved courses, visit www.nmbar.org/MCLE. Contact MCLE with questions at 505-797-6054 or mcle@nmbar.org.

— *Featured* —

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UNM SCHOOL OF LAW Law Library Hours Fall 2019

Through Dec. 31

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	Closed.

Reference

Monday–Friday	9 a.m.–6 p.m.
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Holiday Closures

Thanksgiving: Nov. 28-29

Winter Break: Dec. 23-Jan. 1, 2020

OTHER BARS New Mexico Black Lawyers Association Annual CLE

The New Mexico Black Lawyers Association invites members of the legal community to attend its annual CLE, "When They See Us: Navigating Expungement in New Mexico." (1.0 G) on Nov. 15 at the State Bar of New Mexico (5121 Masthead NE, Albuquerque). Lunch will be served prior to the CLE from 12:15 until 1:15 p.m., and the CLE will last from 1:30-2:30 p.m. Registration is \$50 for attorneys seeking credit, and \$40 for NMBLA members, co-sponsors, government/non-profit

attorneys, attorneys who are not seeking CLE credit, and paralegals. The deadline to request a refund is Nov. 8. For more information, or to register online, please visit www.newmexicoblacklawyersassociation.org.

Federal Bar Association

Qui Tam Section CLE

The Qui Tam Section of the Federal Bar Association is bringing to Albuquerque, "The False Claims Act Today," the traveling CLE that looks at real-life FCA practice in specific jurisdictions from 11 a.m.-2p.m. on Nov. 20 at the Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd NW, Jury Assembly Room, Albuquerque. The seminar will focus on litigating FCA claims in the Tenth Circuit. The number of False Claims Act cases filed in the U.S. is increasing.

In fiscal 2015, the U.S. Department of Justice recovered more than \$3.5 billion in civil settlements and judgments under the FCA—most arising from complaints filed by whistleblowers, who received almost \$600 million in rewards during the same period. For more information and to register visit <http://www.fedbar.org/FCADNM>.

OTHER NEWS

Santa Fe Neighborhood Law Center

Update on Annual CLE Conference

The Santa Fe Neighborhood Law Center's annual December CLE, "Policy and Law Conference" will no longer be held. After 12 years the SFNLC, a non-profit policy and advocacy organization, has

ceased its operations and is terminating its existence. Through litigation, agency advocacy and educational civic forums, the SFNLC advanced the rights of people threatened with foreclosures, improved City policies and procedures for review and approval of proposed developments, and conducted a major policy and law conference every December since 200 devoted to solutions for issues important to the life of Santa Fe. We thank the many presenters and participants for your support, attendance, hard work and wisdom over the years. Any questions should be directed to Daniel Yohalem, president of the SFNLC Board, at dyohalem@aol.com.



GENE FRANCHINI HIGH SCHOOL MOCK TRIAL COMPETITION

An Innovative, Hands-On Experience in the Law

Judges needed for the qualifier rounds in Las Cruces and Albuquerque

The Gene Franchini New Mexico High School Mock Trial Competition needs judges for the qualifier rounds. The qualifier competition will be held February 21st and 22nd, 2020 in LAS CRUCES AND ALBUQUERQUE. It will be hosted by the Bernalillo County Metropolitan Court in Albuquerque and the Third Judicial District Court in Las Cruces.

Mock trial is an innovative, hands-on experience in the law for high school students of all ages and abilities. Every year hundreds of New Mexico teenagers and their teacher advisors and attorney coaches spend the better part of the school year researching, studying and preparing a hypothetical courtroom trial involving issues that are important and interesting to young people.

Please sign up at <http://www.civicvalues.org/judge-volunteer-registration> by January 20, 2020.

If you have any questions, please contact Kristen at the Center for Civic Values at 764-9417 or Kristen@civicvalues.org.



Legal Education

November

- | | | |
|--|---|--|
| <p>13 Reefer Madness Part Deux: Chronic Issues in New Mexico Cannabis Law
5.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>15 Winning Your Case in Discovery Seminar
5.0 G, 1.0 EP
Live Seminar, Albuquerque
New Mexico Trial Lawyers Foundation
www.nmtla.org</p> | <p>22 Tax Pitfalls for the Small Business Attorney (2019)
3.0 G
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>13 Unlocking the Opportunity of Complex Asset Charitable Gifts
1.2 G
Live Seminar, Albuquerque
National Christian Foundation
www.ncfgiving.com</p> | <p>19 Annual Leadership for Justice
10.5 G, 2.0 EP
Live Seminar, Albuquerque
New Mexico Office Of Attorney General
www.nmag.gov</p> | <p>22 Deal or No Deal? Ethics on Trial with Joel Oster (2019)
1.0 EP
Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>14 2019 Probate Law Institute
6.5 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>19 Staying Out of the News: How to Avoid Making the Techno-Ethical Mistakes that Put You on the Front Page
1.0 EP
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 Risk Management Annual CLE
5.0 G, 2.0 EP
Live Seminar, Santa Fe
New Mexico General Services Department
www.generalservices.state.nm.us</p> |
| <p>15 Basics of Trust Accounting: How to Comply with Disciplinary Board Rule 17-204
1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>21 A Comedic De-Briefing of the Law
3.5 G, 3.5 EP
Live Seminar, Albuquerque
Comedian Of Law
www.comedianoflaw.com</p> | <p>22 How to Practice Series: Estate Planning
5.0 G, 2.0 EP
Live Replay,/Live Webcast
Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>15 When They See Us: Navigating Expungement in New Mexico
1.0 EP
Live Webinar, Albuquerque
New Mexico Black Lawyers Association
www.newmexicoblacklawyersassociation.org</p> | <p>21 2019 Animal Law Institute: The Law and Ethics of Wild Animals in Captivity
5.3 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>22 The Ethics of Healthy Lawyering — Taking Control
2.0 EP
Live Seminar, Albuquerque
Bar Plan Foundation
www.thebarplan.com</p> |
| | <p>21 Tribal Energy in the Southwest
10.2 G
Live Seminar, Albuquerque
Law Seminars International
www.lawseminars.com</p> | <p>26 8 Mistakes Experienced Contract Drafters Usually Make
1.0 G
Live Webinar
Center for Legal Education of NMSBF
www.nmbar.org</p> |

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. 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 type, course provider and registration instructions.

December

- | | | |
|--|---|---|
| <p>3 Immigration Law: Updates and Best Practices in Preparing VAWA Applications
1.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>5 Orientation and Ethics of Pro Bono
2.0 EP
Live Seminar, Albuquerque
Volunteer Attorney Program
505-814-5033</p> | <p>11 Bridge the Gap Mentorship CLE (Full Day)
5.0 G, 1.0 EP
Live Webcast/Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>3 Water Rights in New Mexico
5.0 G, 1.0 EP
Live Seminar, Albuquerque
NBI Inc
www.nbi-sems.com</p> | <p>5 Current Immigration Issues for the Criminal Defense Attorney (2019 Immigration Law Institute)
2.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>12 Bridge the Gap Mentorship CLE (Partial Day)
3.0 G, 1.0 EP
Live Webcast/Live Replay, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>3 ADR Excellence: Does Practice Make Perfect?
1.5 G
Live Webinar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Real Property: Taking New Mexico Real Property Issues into the Next Decade
5.2 G
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>13 Forensic Science and Ethics
6.0 G
Live Seminar, Las Cruces
New Mexico Criminal Defense Lawyers
www.nmcdla.org</p> |
| <p>4 Lifting the FOG on Public Records Access
5.3 G, 1.0 EP
Live Program, Albuquerque
New Mexico Foundation For Open Government
www.nmfog.org</p> | <p>6 Jury Selection in the Age of #MeToo: Ethics and Advanced Topics
6.0 G
Live Seminar, Albuquerque
New Mexico Criminal Defense Lawyers
www.nmcdla.org</p> | <p>16 Complying with the Disciplinary Board Rule 17-204
1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>4 Annual Winter Meeting and Seminar
10.0 G, 2.0 EP
Live Program, Albuquerque
New Mexico Municipal League
www.nmml.org</p> | <p>6 Craft Beer and Creatives: The Hipster Side of Intellectual Property Law
5.0 G, 1.0 EP
Live Webcast/Live Seminar, Santa Fe
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>17 Access to Justice: Best Path Forward: Point - Counterpoint
1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>4 Oil & Gas Law in New Mexico
6.0 G, 1.0 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> | <p>6 Advanced Program and Practicum on Jury Selection
4.0 G, 2.0 EP
Live Seminar, Albuquerque
New Mexico Trial Lawyers Foundation
www.nmtla.org</p> | <p>19 2019 Trial Practice Institute: Trial Know How
5.2 G, 1.2 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>5 Volunteer Attorney Program Orientation
2.0 EP
Live Seminar, Albuquerque
Volunteer Attorney Program
www.lawaccess.org</p> | <p>9 Real Estate Transactions Toolkit
5.0 G, 1.0 EP
Live Program, Albuquerque
NBI Inc
www.nbi-sems.com</p> | <p>20 2019 Powered by New Mexico: Energy Use and Production in Land of Enchantment
1.5 G, 4.5 EP
Live Webcast/Live Seminar, Albuquerque
Center for Legal Education of NMSBF
www.nmbar.org</p> |
| <p>5 WCA Winter Seminar
5.0 G, 1.0 EP
Live Program, Albuquerque
Workers Compensation Association Of New Mexico
www.wcaofnm.com</p> | | |



STATE BAR
of NEW MEXICO

Board of Bar Commissioners Election 2019

Voting
began online
Nov. 8.

Voting in the 2019 election for the State Bar of New Mexico Board of Bar Commissioners began Nov. 8 and close at noon on Dec. 2. Four candidates submitted nomination petitions for the two open positions (one three-year term and one one-year term) in the First Bar Commissioner District (Bernalillo County), and the candidates are Sean M. FitzPatrick, Tomas J. Garcia, Stephen D. Ralph and Lucy H. Sinkular, so there will be an election in that district. Two candidates submitted nomination petitions for the one open position in the Third Bar Commissioner District (Los Alamos, Rio Arriba, Sandoval and Santa Fe counties), and the candidates are Evan R. Cochnar and Carolyn A. Wolf, so there will be an election in that district. Three candidates submitted nomination petitions for the two open positions in the Seventh Bar Commissioner District (Catron, Dona Ana, Grant, Hidalgo, Luna, Sierra, Socorro and Torrance counties), and the candidates are Connie J. Flores, David P. Lutz and Ramona J. Martinez-Salopek, so there will be an election in that district. Voting is being conducted electronically. For voting procedures, see page 15.

No nomination petitions were submitted for the open position in the Fifth Bar Commissioner District (Curry, DeBaca, Quay and Roosevelt counties), so the Board will appoint someone from that district to fill the vacancy. One nomination petition was submitted for the open position in the Sixth Bar Commissioner District (Chaves, Eddy, Lea, Lincoln and Otero counties) from Parker B. Folse, so he is elected by acclamation.

First Bar Commissioner District Candidates

Sean M. FitzPatrick



Biography:

Sean FitzPatrick is a graduate of UNM School of Law and is a sole practitioner at his firm FitzPatrick Law, LLC which he started in 2016. FitzPatrick's current practice area is civil litigation focusing on injury and insurance law in Albuquerque, NM. FitzPatrick worked as a prosecutor in Farmington, NM litigating a variety of felony and misdemeanor cases for a few years after law school.

FitzPatrick has served on the Young Lawyers Division board for the past six years. Outside of work, you can find FitzPatrick running, biking, or participating in other type 2 fun activities with his wife Eva.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

Three issues that the State bar and the legal profession in New Mexico should be focusing on are: integration of technology into the legal profession, offering more services and events that promote lawyer well-being for members of the State Bar, and supporting lawyers who work to raise the standard of practice in New Mexico.

2. How well do you think the State Bar is fulfilling its mission and objectives?

The State Bar and its various sections and divisions are on the right path in fulfilling its missions and objectives. There is always more that can be done, but incremental progress is occurring. Having been on the BBC in 2018 and 2019, I have seen the intentional push to modernize the State Bar with online case access and promote wellness with the Employee Assistance Program and other services.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I have been a Board member of New Mexico's Young Lawyers division for the past 6 years and served as chair during that time. As part of that I served on the Board of Bar Commissioners in 2018 and then applied for and was appointed to a vacant position in 2019. I have served on the Civil Jury instruction committee, attended the Judicial Information Systems Council meetings, and the Natural Resources Energy and Environmental law board in the past. I also serve on the New Mexico Trial Lawyers Board and am a member of the American Association for Justice.

BBC election information is continued on the next page.

Tomas J. Garcia



Biography:

Tomas J. Garcia is an associate at Modrall Sperling in Albuquerque, where he practices commercial, healthcare, torts/personal injury, and transportation litigation. Prior to joining Modrall Sperling, he clerked for the late Justice Charles W. Daniels at the New Mexico Supreme Court. An Albuquerque native, Tomas received his law degree from Georgetown University Law

Center in 2011. He received a bachelor's degree from Yale University and a master's degree from the Kennedy School of Government at Harvard University.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

Many would-be consumers of legal services never engage a lawyer either because services are cost-prohibitive or because of a lack of service providers in their communities. The State Bar should continue to work on addressing how best to make legal services accessible to our population statewide, while ensuring those services meet the standards our profession demands. Some ways the State Bar can promote this include: exploring limited practice licensing to expand the reach of legal service providers in communities with few attorneys; developing opportunities for lawyers to begin their careers in locations where few attorneys

currently practice; and establishing State Bar Center satellite offices throughout New Mexico with telecommunication/video-conferencing capabilities so members of the public statewide can readily access a larger pool of prospective providers.

2. How well do you think the State Bar is fulfilling its mission and objectives?

Two of the State Bar's objectives are to improve the relationships between the legal profession and the public, and to encourage and assist in the delivery of legal services to all in need of such services. The State Bar, through the work of many Divisions, Sections, Committees, and Commissions, works hard to accomplish these objectives. From my experience as a former leader of the State Bar Young Lawyers Division, I think the State Bar could better assist these individual parts work together more effectively to accomplish these important objectives.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I served on the board of the State Bar Young Lawyers' Division (YLD) from 2014 to 2018. As chair in 2017, I served as the division's liaison to the Board of Bar Commissioners and was appointed to the New Mexico Supreme Court Rules of Civil Procedure Committee. During my time on the YLD board, I expanded the law student mentorship program, organized and hosted CLE programs targeted to lawyers in their first years of practice, and saw the expansion of public service programs. I have also been active in the American Bar Association (ABA), serving various roles with the ABA Section of Litigation and the ABA YLD. Currently, I serve as the ABA's statewide membership director for New Mexico.

Lucy H. Sinkular



Biography:

Lucy Sinkular was born and raised in Nebraska, earned her B.A. in English from the University of Nebraska and her J.D. from the University of Kansas. She began her legal career in Albuquerque in 1994, working first in insurance defense then in family law at Atkinson & Kelsey, PA. Life intervened, and for the following 20 years Lucy practiced law remotely while moving around the

world with her husband Scott for his military career. In 2017, she returned for Scott's final assignment at KAFB, and was pleased to resume practicing family law at Atkinson & Kelsey, PA. Lucy's family also includes their daughter Emily graduating from Colorado State University next month, son John a sophomore at NMSU, as well as two beloved dogs and one kitty. Lucy is an avid runner, biker and hiker, and admits a lifelong passion for volunteer work in her community and church.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

First, the success of the State Bar depends largely on meeting the needs of solo and small-firm attorneys. Solo practitioners were the largest group of respondents (26%) in the 2017 Economics of Law Practice in New Mexico study. We should ensure all members know the existing scope of benefits the Bar offers—resources such as Fastcase research, continuing legal education and networking through section and committee membership. We should also increase opportunities for collaboration and mentorship between experienced and new attorneys. Second, the profession and State Bar should continue efforts to provide access to legal services for all New Mexicans. Finally, attorneys individually and within the Bar should work to elevate the level of civility and competence among us.

2. How well do you think the State Bar is fulfilling its mission and objectives?

The Bar's mission statement is "to be a united and inclusive organization serving the legal profession and the public." I think we do well on both fronts. Service to the legal profession requires a stringent focus on member benefits—knowing what services attorneys want and need, and choosing the best allocation of resources to make the greatest impact. I look forward to developing more opportunities for the Bar to serve its members. Serving the public includes the Bar's

BBC election information is continued on the next page.

regulatory functions, our support for provision of legal services to the underserved segments of New Mexico's population and also the Bar's participation in providing quality continuing legal education for attorneys. I would like to build on the Bar's existing, strong public service components.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

As a Bar Commissioner for the First District, I am on the BBC's Finance Committee and the Policy and Bylaws Committee. On these Committees I am one voice in making financial and policy

decisions that shape the Bar's future work for attorneys. At this fall's Commissioner Retreat, I participated in developing the robust, three-year strategic plan for the State Bar that should produce appreciable benefits for all members. I serve on the boards for the NM Women's Bar Association and the NM Family Law Section. I am active in the Family Law Section's ongoing effort to reinstate the specialization program. I am a member of the ABA Family Law Section, of the Military Spouses JD Network and of the NM Collaborative Practice Group.

Stephen D. Ralph



Biography:

Stephen currently serves as a Senior Trial Attorney at the Second Judicial District Attorney's Office in Albuquerque. He has previously served as a law clerk for the New Mexico Supreme Court and as an Assistant District Attorney in Clovis, New Mexico. He is a graduate of the University of New Mexico School of Law and has lived in New Mexico since 2006.

Stephen is actively involved in Toastmasters International, earning his Distinguished Toastmaster award and serving as a Division Director. He is a member of the National District Attorneys Association and a board member of the New Mexico Lawyers Chapter of the Federalist Society. Outside of work, Stephen is an avid fan of the New Mexico United soccer team and a certified soccer referee. He enjoys taking his dog on long walks in the mountains and spending time with friends and family.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

Access to affordable and convenient CLEs is an important issue facing the State Bar. CLEs are essential learning opportunities for attorneys, but many members find attending classes difficult, expensive, and inconvenient to their schedules. This is especially true in rural areas where attorneys are required to travel long distances to attend needed CLEs. Additionally, the cost of attending many of these CLEs is prohibitively expensive to solo practitioners and attorneys practicing outside of large firms or government organizations. The

State Bar should be doing more to reduce the cost of CLEs, increase in-person CLEs for rural and remote areas and boost the number of CLEs available online. By doing so, we as the State Bar can better serve all members across the state.

2. How well do you think the State Bar is fulfilling its mission and objectives?

The purpose of the State Bar is to promote the interests of the legal profession in the State of New Mexico. I believe the State Bar is fulfilling this purpose by seeking to help and engage its members to benefit the practice of law. However, as with all organizations, the work is never finished. I would like to see the State Bar expand its efforts into rural communities to help those who have chosen to practice in small towns, away from Albuquerque and Santa Fe, and provide support to those communities needing legal help. As a former small-town prosecutor, I know what it's like to feel left behind, and we must do more to help these communities feel a part of our community again.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

Beginning my practice in Clovis, New Mexico did not afford me the same opportunities to be involved in the State Bar as my colleagues beginning their careers in Albuquerque. There was no local bar association, no YLD presence, and seemingly no opportunities to serve on State Bar committees. Living in Albuquerque has afforded me the opportunity to become more involved in the legal community. I have been a member of the Seth Oliver American Inn of Court in Santa Fe, the American Bar Association, and currently serve as a board member of the New Mexico Lawyers Chapter of the Federalist Society. I am also a current member of the National District Attorneys Association.

Third Bar Commissioner District Candidates

Evan R. Cochnar



Biography:

I am currently a Senior Litigation Attorney at the Risk Management Division, General Services Department of the State of New Mexico. I help oversee the range of civil claims against state agencies, which include claims in the areas of medical malpractice, administrative law, employment law, and civil rights law, and manage and direct outside counsel throughout the litigation process and work to resolve cases in mediations.

Previously, I worked as a district attorney at the 2nd Judicial District Attorney's Office, as well as the Albuquerque City Attorney's Office, and the 11th Judicial District Attorney's Office in Farmington, New Mexico. I earned my Juris Doctor from Syracuse College of Law in 2009 and my Bachelor of Arts from the University of New Mexico in 2006. I've lived in Albuquerque since I was ten years old, and still reside in the Duke City. I also serve on the Board of Directors for the Young Lawyers Division.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

I believe the State Bar and the New Mexico Legal Community should address the lack of access to legal services and representation throughout rural and outlying regions in the State, as well as to lower income individuals in the metropolitan areas. Frequently, smaller towns and communities face a critical shortfall in attracting and retaining new lawyers, especially in crucial areas of practice such

as indigent criminal defense, criminal prosecution, and defense against predatory lending and renting practices. Even in metropolitan areas, access to legal services for more marginalized communities is increasingly difficult. The State Bar should work proactively with local communities towards the goal of recruiting and retaining dedicated attorneys to live and work in outlying areas, and to incentivize more expansive legal representation in all areas for lower income and indigent clients.

2. How well do you think the State Bar is fulfilling its mission and objectives?

I believe the State Bar is a dynamic and invaluable organization that has done an exemplary job in many areas, which include expanding public and attorney access to court filings with the SOPA application program, constructively embracing new technology with the CLE webcast program, and providing a support mechanism for bench and bar members dealing with mental health issues via the New Mexico Judges and Lawyers Assistance Program. The State Bar should work to expand these services, as well as work to better address issues especially affecting newer members of the bar, such as the student loan debt crisis and the need for greater civility in the legal workplace.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

Through the auspices of the Young Lawyers Division I have been involved in putting together volunteer events and networking opportunities for new attorneys. I have taken the lead in setting up several Wills for Heroes volunteer events throughout the State, providing first responders with wills, powers of attorney, and advance medical directives. I have also participated in setting up legal call-in events and career development workshops for law students. I have also served as a delegate representing the New Mexico Young Lawyer's Division at several ABA Conferences.

Carolyn A. Wolf



Biography:

I am currently in private practice in Santa Fe. In more than twenty years in state government, I was in-house counsel for the Human Services Department, Health and Environment Department, and Taxation and Revenue Department, and was counsel for other agencies, boards and commissions as an attorney in the Civil Division of the Attorney General's Office. I was General Counsel for the

Department of Finance and Administration, Chief Counsel for the Taxation and Revenue Department, and in practice with Montgomery & Andrews for several years. I am a graduate of Rice University and University of New Mexico School of Law. My husband, Aaron, and daughter, Rebekah, are attorneys in Santa Fe. My daughter, Sarah Weissman, is a rabbi in Los Altos Hills, California.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

The availability of affordable legal services to anyone in need of them remains one of the most important issues to be addressed by the profession and the State Bar. This includes how to attract attorneys to underserved parts of New Mexico and to serve underserved populations throughout the state. I think discussion of development of a program to license limited legal technicians is valuable and support of pro bono programs and service by individual attorneys by the State Bar should be continued and increased.

2. How well do you think the State Bar is fulfilling its mission and objectives?

In Rule 24-101(A) NMRA, the Supreme Court lists at least ten objectives of the State Bar, some for the benefit and improvement of members and some in the public interest. The State Bar is fulfilling these objectives in many ways. It supports YLD's public service programs and LREP in the public interest. The State Bar's Committee on Women and the Legal Profession and Committee on Diversity in the Legal Profession address the needs of minority

BBC election information is continued on the next page.

and women members, and the annual meeting provides a forum for the legal practice and law reform. While the State Bar should do more to meet the goals set by the Supreme Court's rule, I believe it is an effective organization and will continue to work to that end.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I currently serve on the Board of Bar Commissioners and previously served from 1997-2003 and 2008-2010. I was on the Public Law Section board and was the Chair of the Section in 1995 and 2015. I have been the Bar Commission liaison to the Appellate Rules Committee and serve on the Compilation Commission Advisory Committee.

Seventh Bar Commissioner District Candidates

Connie J. Flores



Biography:

Connie J. Flores is a partner at Flores, Tawney, Acosta P.C, specializing in cases involving personal injury to include on the job injuries, premises liability, Dram Shop, nursing home and representing victims of sexual abuse in civil lawsuits. Her mission is to help injured people that have been treated unjustly by insurance companies. As a fluent Spanish speaker, Ms.

Flores enjoys representing individuals who otherwise would not be able to effectively communicate their issue to an attorney. Ms. Flores attended the University of Denver and graduated in 2003. She attended UNMSOL graduating in 2008. She was admitted to practice law in New Mexico in September 2008 and Texas in May 2009. Ms. Flores, who became a teenage mother at the age of 15, has been asked on numerous occasions to be a keynote speaker at local area high schools addressing the issues surrounding teenage pregnancy, in an effort to encourage teenage parents to continue their education and attend college.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

An important issue that the profession and the State Bar should address is the exposure of the legal profession to local area high school students. This would be especially important to students in underprivileged schools. Being the daughter of immigrant parents, I was unaware nor did I understand what the

prerequisites were in order for me to enter the legal profession. Through extensive outreach, we should ensure that our attorneys are engaging local high schools in order to create mentorship programs with high school students who wish to enter the legal profession. Generally speaking, this would help create a more diversified legal community for the future attorneys of tomorrow.

2. How well do you think the State Bar is fulfilling its mission and objectives?

I believe the State Bar offers a variety of programs and services to its members. In particular, the bar created the Bridge the Gap Mentorship (BTG) program. The BTG was created in order to assist new attorneys in the transition from law school to the actual legal practice by providing real-world information and best practices from tenured attorneys. Having been fortunate enough to have mentored three newly licensed attorneys through this program, I realized the benefit of having a mentor who provides guidance as a newly licensed attorney transitions from law school to the legal profession. I firmly believe this program accomplishes its mission in assisting attorneys to become successful practitioners. Although, the Commission does a good job in providing free legal clinics to the local community, there is no such thing as having too much exposure to legal advice for those who might not otherwise have the ability to obtain legal advice. I would like to explore ideas on how to offer more free legal advice to our communities throughout the state.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

Past board member of New Mexico Hispanic Bar, El Paso Trial Lawyer's Association, El Paso Women's Executive Association and Alzheimer's Association. Member of the Women's Bar Association, State Bar of Texas, State Bar of New Mexico and ABA.

BBC election information is continued on the next page.



Biography:

I was born in Las Cruces, New Mexico. I graduated from Onate High School in 1993. After college, I attended Cornell Law School and graduated in 2000. I returned to New Mexico in 2004 and have been here in Las Cruces ever since. I currently work with my father at Martin & Lutz, P.C., a general practice law firm in Las Cruces, New Mexico. We handle a variety

of civil, domestic relations, and other matters in State and Federal Courts in both New Mexico and Texas. It is a diverse and rewarding practice that presents new and interesting challenges every day. Beyond the practice of law, I enjoy playing soccer. I also currently serve as Senior Warden of St. Andrew's Episcopal Church in Las Cruces. Otherwise, I like to take part in whatever cultural opportunities exist here in my hometown of Las Cruces, whether at New Mexico State University or beyond. I very much enjoy living here and practicing law and hope to do so for many years into the future.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

The practice of law in New Mexico is rewarding but also very challenging. The State Bar of New Mexico plays a pivotal role both in terms of member services and to serve the general public with respect to issues related to lawyers and the practice of law. As legal services continue to be more readily available in urban centers, the State Bar of New Mexico is examining how to ensure statewide outreach so that all New Mexicans

can have access to legal services that they need. The State Bar of New Mexico is also continuing its focus on lawyer wellness based upon the emotional difficulties that the profession can sometimes present, particularly in terms of achieving a positive work/life balance. I would like to continue to work on the Board of Bar Commissioners on these important issues.

2. How well do you think the State Bar is fulfilling its mission and objectives?

I believe the State Bar of New Mexico is doing a very good job fulfilling its mission and objectives. The recent transfer of MCLE from the Supreme Court of New Mexico and the general financial soundness of the organization attests to the State Bar of New Mexico's effectiveness at the present time. The challenge of communicating the member services available and ensuring that members understand where the dues being paid are going remains. This issue is particularly important outside of the Albuquerque/Santa Fe area since it often seems that State Bar of New Mexico activities are congregated in that area. I am hopeful that the State Bar of New Mexico will continue to find ways to serve members throughout the State of New Mexico generally, and more specifically have the Annual Meeting in the Seventh District in Las Cruces in the coming years which has not occurred in many years.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I am a member of both the State Bar of New Mexico and the State Bar of Texas. I served on the Board of the Young Lawyers Division of the State Bar of New Mexico from 2007 through 2011 representing the southwest region of New Mexico. I have served as the representative for the Seventh District, covering the Third, Sixth, and Seventh Judicial Districts, on the Board of Bar Commissioners from 2017 through 2019. I would be honored to continue to serve.

Ramona J. Martinez-Salopek



Biography:

Ramona is a founding partner at Streeter & Martinez-Salopek, LLC and primarily focuses her practice in the areas of criminal defense, civil litigation, contract law, and governmental representation. As a previous Associate Trial Attorney at the Law Offices of the Public Defender, Ramona found a passion and love for juvenile justice. Ramona is a native New Mexican. She grew up in Tierra Amarilla on

her family's ranch. Ramona is a graduate of the University of New Mexico and the University of New Mexico School of Law. Prior to attending law school, Ramona worked for the Office of Governor Bill Richardson. Ramona was also a public servant working at the Children, Youth, and Families Department, and then at the New Mexico Retiree Health Care Authority. She has worked and volunteered for numerous congressional and statewide political campaigns. Ramona is a devoted mother of an 18-year-old son, Garrett, who is attending NMSU. Ramona is married her husband, Anton Salopek, a pecan farmer in the Mesilla Valley.

1. Give your perspective on any important issues that you believe the profession and the State Bar should be addressing.

The State Bar should continue to aim at diversifying its membership so that it is reflective of New Mexico's population. In addition, the State Bar should focus on rural New Mexico communities and encouraging the practice of law in these areas and to show more of a presence outside the Santa Fe and Abq Metro areas.

2. How well do you think the State Bar is fulfilling its mission and objectives?

The New Mexico bar community is a group of talented and passionate legal professionals. The State Bar continuously strives to do better and is always looking for ways on how to accomplish its objectives. The State Bar should continue to look for ways to improve its improve the quality of members' legal practice, to support and improve the justice system, and to support the indigent community of New Mexico.

3. What has been your involvement in the State Bar and/or other law-related organizations, such as national, local and voluntary bars?

I am the current President of the Junior League of Las Cruces. I have been a past board member of the Albuquerque Community Foundation's Future Fund and HELP NM CSBG Board. I am a current board member of the New Mexico Hispanic Bar Association, the Southwest Board of Director of the New Mexico Criminal Defense Lawyers Association, and a board member of the recently formed Cannabis Law Section of the State Bar of New Mexico.

Electronic Voting Procedures

A link to the electronic ballot and instructions was emailed on Nov. 8 to all active members in the First, Third and Seventh Bar Commissioner Districts using email addresses on file with the State Bar. Active status members who reside outside the State of New Mexico shall vote in the district where the State Bar office is located (Bernalillo County). To provide an email address if one is not currently on file or to request a mailed ballot, contact Pam Zimmer at pzimmer@nmbar.org.

The election will close at noon on Dec. 2, at which time the election results will be certified.

Arturo L. Jaramillo Summer Law Clerk Program

The State Bar of New Mexico Committee on Diversity in the Legal Profession wishes to thank the law firms and employers participating in the 2019 Arturo L. Jaramillo Summer Law Clerk Program. **Thanks to these law firms, 17 first year law students from the University of New Mexico School of Law had the opportunity to gain valuable clerkship experience this past summer.**

ACLU of New Mexico
Butt Thornton & Baehr PC
Freedman Boyd Hollander Goldberg Urias & Ward PA
Kennedy Kennedy & Ives
Martinez, Hart & Thompson, PC
McGinn Montoya Love & Curry
Modrall Sperling Roehl Harris & Sisk PA
Office of the 2nd Judicial District Attorney
Peifer, Hanson & Mullins, PA

PNM Resources Inc.
Rodey Dickason Sloan Akin & Robb PA
Rose L Brand & Associates, PC
Rothstein Donatelli LLP
SaucedoChavez PC
Sheehan & Sheehan PA
Sutin Thayer & Brown PC
Will Ferguson & Associates

Congratulations to the students who participated in the 2019 program!

Jessica Martinez
Hope Pendleton
Isaac Lopez
Dharma Khalsa
Ashlee Carrasco
Kateri West

Ian Jump
Sarah McLain
Isela Anchondo
Jennifer “Nikki” Berry
Alexandra Gutierrez
Mallory Wolff

Itzel Valencia Soria
Paige Gallegos
Anna Trillo
Juancarlos Miranda

Also, the Committee would like to extend a special thank you to **Mo Chavez**, chair of the Clerkship Program Selection Committee and the University of New Mexico School of Law for all their help with this program.



Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Joey D. Moya, Chief Clerk New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

CLERK'S CERTIFICATE OF ADMISSION

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From the New Mexico Court of Appeals
Certiorari Granted, April 8, 2019, No. S-1-SC-37450.

Opinion Number: 2019-NMCA-033

No. A-1-CA-35807 (filed November 28, 2018)

NICHOLAS T. LEGER as PERSONAL
REPRESENTATIVE for the ESTATE OF
MICHAEL THOEMKE and DANIEL
THOEMKE, individually,
Plaintiffs,

v.

NICHOLAS T. LEGER as assignee
OF PRESBYTERIAN HEALTHCARE
SERVICES, and JOHN OR JANE DOES
1-5,

Defendants/Third-Party Plaintiffs-Appellees,

v.

RICHARD GERETY, M.D., and
NEW MEXICO HEART INSTITUTE,
Third-Party Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY
GERALD E. BACA, District Judge

The Vargas Law Firm, LLC
RAY M. VARGAS, II
Albuquerque, New Mexico

Lorenz Law
ALICE T. LORENZ
Albuquerque, New Mexico

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Opinion

Linda M. Vanzi, Chief Judge

{1} This interlocutory appeal presents a question of first impression concerning assignment of claims for compensation covered by the Medical Malpractice Act (the MMA or the Act), NMSA 1978, §§ 41-5-1 to -29 (1976, as amended through 2015). In the litigation below, plaintiffs sued a hospital on claims subject to the MMA based, in part, on allegations of malpractice by a physician not employed by the hospital for which plaintiffs claimed

the hospital was vicariously liable. After the hospital filed a third-party complaint for equitable indemnification against the physician and his employer, in compliance with the MMA's requirements concerning pre-filing review and decision by the Medical Review Commission, plaintiffs successfully moved for orders staying that action and preventing the third-party defendants from participating in discovery in plaintiffs' case against the hospital, arguing (among other things) that plaintiffs had chosen not to sue the third-party defendants and had no interest in the hospital's indemnification claim. Nevertheless, one

plaintiff acquired the hospital's indemnification claim by assignment in settling plaintiffs' case against the hospital and then moved to lift the stay and take over as third-party plaintiff on that claim.

{2} The question presented is whether the hospital's assignment of its indemnification claim to one of the plaintiffs is barred by the MMA's prohibition against assignment of "[a] patient's claim for compensation under the [MMA,]" Section 41-5-12, or the common law. Applying New Mexico precedents concerning statutory construction—in particular, precedents construing the MMA—we conclude that the Legislature intended the MMA's requirements and restrictions to apply to all "malpractice claims" covered by the MMA and hold that Section 41-5-12 bars assignment of all "malpractice claims" for compensation covered by the MMA. One of these precedents, *Wilschinsky v. Medina*, 1989-NMSC-047, ¶ 26, 108 N.M. 511, 775 P.2d 713, held that "the [L]egislature intended to cover all causes of action arising in New Mexico that are based on acts of malpractice." Further, *Christus St. Vincent Regional Medical Center v. Duarte-Afara*, 2011-NMCA-112, ¶¶ 1, 14-20, 267 P.3d 70, made clear that the character of an indemnification claim under the common law as "separate and distinct from the underlying tort" does not control determination of whether the MMA's requirements and restrictions apply. Our statutory construction analysis is dispositive of this appeal, regardless of how a claim not covered by the MMA would be treated under the common law. Our conclusion concerning the assignment issue obviates the need to resolve other issues discussed by the parties.

Background

{3} This appeal arises from a complaint asserting claims for wrongful death, negligence, and medical malpractice filed by Nicholas T. Leger, as Personal Representative for the Estate of Michael Thoemke, and Daniel Thoemke, individually (collectively, Plaintiffs), against Presbyterian Healthcare Services (PHS) after Michael Thoemke died at Presbyterian Hospital. Although the complaint did not name Dr. Richard Gerety as a defendant, it included allegations concerning Dr. Gerety's conduct in consulting on Michael's case while "acting within the course and scope of his employment, or acting as the agent or ostensible agent of [PHS.]" In

answering the complaint, PHS admitted that Dr. Gerety consulted on Michael's case but denied allegations that Dr. Gerety was PHS's cardiothoracic surgeon and that Dr. Gerety acted within "the course and scope of his employment, or act[ed] as the agent or ostensible agent of [PHS]."

{4} After obtaining review and decision by the Medical Review Commission (as required for malpractice claims against a health care provider covered by the MMA, see §§ 41-5-5, -14, -15(A)) and the district court's leave to file, PHS filed a third-party complaint against Dr. Gerety and his employer, New Mexico Heart Institute (NMHI) (collectively, Appellants), stating, "[I]n the event that Dr. Gerety is found negligent in [this] suit, and in the event that PHS is found to be vicariously liable for the conduct of Dr. Gerety, then PHS is entitled to indemnification from [Appellants] for all fees, expenses, judgments, settlements and any and all other damages reasonably related to the alleged conduct of Dr. Gerety." In answering the third-party complaint, Appellants denied that Dr. Gerety was negligent and that PHS "is vicariously liable for the alleged acts and omissions of Dr. Gerety" and alleged affirmative defenses.

{5} Plaintiffs moved to sever or bifurcate and stay the third-party complaint, arguing (among other things) that PHS's suit "is contingent upon a jury first finding that PHS is liable for the death of Michael Thoenke, and that PHS's liability is based, in whole or in part, upon the acts or omissions of [Appellants]"; "Plaintiffs have no interest in the outcome of PHS's common law indemnification claims"; "Plaintiffs should not be dragged into a dispute that does not involve them, and that is not yet perfected or ripe"; "nothing in the law requires Plaintiffs to sue those third parties and Plaintiffs here have chosen not to"; "Plaintiffs have no standing or interest in any post-judgment indemnification claims brought by PHS against third parties"; and the indemnification claim would not accrue unless Plaintiffs obtained a judgment against PHS. Plaintiffs also moved for a protective order from discovery propounded by Appellants, arguing again that Plaintiffs did not sue Appellants and "have no interest or stake" in the third-party action, and that PHS's indemnification claim had not accrued. The district court granted both motions, and denied PHS's later motion to reconsider the order granting severance and stay.

{6} Plaintiffs ultimately settled their claims against PHS, and the district court dismissed those claims with prejudice. As part of that settlement, PHS assigned to Nicolas T. Leger, as Personal Representative of the Wrongful Death Estate of Michael Thoenke:

Any and all rights, claims, and causes of action of [PHS] against [Appellants] arising out of claims for indemnification, contribution, or any other rights or claims arising out of [PHS's] payment of defense fees, defense costs relating to claims of medical negligence against [Appellants], and payment of any amounts, including payments made in settlement to . . . Plaintiffs in the matter known as *Leger, et al. v. Presbyterian Healthcare Services*, . . . including the claims brought by [PHS] against [Appellants] in the May 21, 2013 [t]hird-[p]arty [c]omplaint for indemnification filed therein.

{7} Following the settlement, Leger moved to lift the stay of PHS's third-party complaint and for leave to file an amended third-party complaint, stating, "Now that the underlying case is fully resolved, and the [t]hird [p]arty claims assigned to Leger, the time has come for the stay of the [t]hird [p]arty [a]ction to be lifted and that action to proceed to trial."

{8} In separate responses, Appellants did not oppose the request to lift the stay but opposed the motion to amend (with NMHI adopting Dr. Gerety's arguments while asserting additional arguments). As relevant here, Dr. Gerety argued that the indemnification claim is "a claim for compensation under the [MMA]" and a "medical malpractice claim" that is "covered by all of the regulatory aspects of the [MMA]," and that Section 41-5-12 (prohibiting assignment of "[a] patient's claim for compensation under the [MMA]") should not be interpreted "to prohibit assignments only by patients" but to prohibit assignment of malpractice claims governed by the MMA, consistent with legislative intent as interpreted by New Mexico case law. He also argued that the common-law prohibition against assignment of personal injury claims prohibits assignment; Leger cannot recover more than the maximum permitted by Section 41-5-6, and allowing Leger to recover on the indemnification claim would increase costs to the healthcare system; Leger's

recovery on the indemnification claim is barred by public policy against double recovery; and having chosen not to present a claim to the Medical Review Commission (presentation requirement), not to sue Dr. Gerety, and to obtain an order severing and staying the third-party action, Leger should not be allowed to prosecute the claim after the expiration of the MMA's statute of repose (Section 41-5-13).

{9} Leger's reply to Dr. Gerety's response argued (among other things) that assignment is not barred because the assignment transferred "an interest in property and is common in commercial enterprises"; the indemnification claim, "while subject to provisions of the [MMA], is separate and distinct from the original claims of personal injury/bodily injury"; and the indemnification claim is not a "patient's" claim for compensation falling within the MMA's anti-assignment provision because PHS does not meet the MMA's definition of "patient" as "a natural person" under Section 41-5-3(E). Leger also argued that there would be no double recovery because the assignment gave Leger "the property rights to any recovery PHS is entitled to" and "PHS has not obtained any recovery in this matter" and that neither the MMA's presentation requirement nor the MMA's statute of repose barred Leger's prosecution of the indemnification claim because PHS had satisfied both requirements and the proposed amendments to the third-party complaint were non-substantive changes that relate back to the original PHS filing.

{10} After the district court granted his motion, Leger, "as [a]ssignee of [PHS]," filed an amended third-party complaint, asserting that PHS is entitled to indemnification if Dr. Gerety is found negligent and PHS is found vicariously liable for Dr. Gerety's conduct, and that "PHS has paid out sums due to its vicarious liability for Dr. Gerety's actions and omissions and is therefore entitled to indemnification."

{11} Appellants moved to dismiss Leger's amended third-party complaint, arguing again that PHS's indemnity claim is a claim for compensation covered by the MMA's anti-assignment provision and common-law prohibition against assignment of personal injury claims and, even assuming a lawful assignment, the claim was barred by Leger's failure to comply with the MMA's presentation requirement and statute of repose. In opposing the motion, Leger reiterated his prior arguments that the assignment is not barred by the common law

because the assignment did not transfer a personal injury claim but “an interest in an equitable/monetary claim and is common in commercial enterprises” or prohibited by the MMA, and that the MMA’s presentation requirement and statute of repose had been satisfied by PHS.

{12} Appellants also moved for summary judgment on the ground that Leger could not meet the requirements necessary to prevail on an indemnification claim, in part, because the settlement agreement with PHS did not discharge the liability of Appellants and so did not “buy peace” for them. In opposing that motion, Leger repeatedly stated that PHS intended “to discharge all tortfeasor liability to original Plaintiffs,” including “for the actions of [Appellants],” and that the “[r]elease discharges liability for the underl[y]ing tort concerning all agents (past, present, actual, ostensible and borrowed).” Leger stated further:

Because PHS paid amounts to cover 100% of the underlying liability claim, original Plaintiffs could no longer maintain suit against [Appellants] in the underlying case. To do so would violate the principle against double recovery. *See Sunnyside and Farms, Inc. v. Central New Mexico Elec. Co-op, Inc.*, 2013-NMSC-017, [¶ 47], 301 P.3d 387 (“[I]n general, plaintiffs may not collect more than the damages awarded to them, or, put another way, they may not receive compensation twice for the same injury[.]”). As such, when PHS settled the case for the entire value of the case, by operation of law, original Plaintiffs were precluded from bringing suit against other Defendants in the underlying tort claim . . . [and] once the original, underlying Plaintiffs could no longer maintain suit against [Appellants], [Leger and PHS were] entitled to seek indemnification. . . . [B]y operation of law, there is no more recovery available from [Appellants] to the original, underlying Plaintiff[s]. As a result of the extinguishment of [Appellants’] liability to the original, underlying Plaintiffs[’] claims, [Leger and PHS are] now able to go forward with the indemnification claims.

Leger also stated that “[Appellants’] liability to the original, underlying Plaintiffs in the underlying case was discharged by operation of law” because Plaintiffs had not brought “direct claims against [Appellants]” within the statute of repose. The reply arguments of Appellants included the following:

[T]he [c]ourt should not validate the assignment or allow Leger to circumvent the [MMA] by choosing not to sue Dr. Gerety, convincing the [c]ourt and Dr. Gerety that he had no interest in the indemnity action and excluding Dr. Gerety from participating in the underlying case, then extracting from PHS an [a]ssignment of its indemnity claim, all in order to collect 100% of his damages from PHS and then recover the same damages from Dr. Gerety. . . . To allow patients to obtain 100% of their damages from one healthcare provider, and then demand an assignment of that provider’s indemnity claim against another provider, in order to allow the patient to obtain more than 100% of his damages, would frustrate the purpose of the Act and simply add to the overall cost of delivering health care as plaintiffs ‘double dip’ their claims.

{13} The district court denied Appellants’ motions in a letter decision. In denying the motion for summary judgment just discussed, the court stated that “[P]laintiffs, by settling with PHS and executing the release settled any and all claims that Plaintiffs had against PHS, [Appellants] and, thereby ‘bought peace’ for [Appellants] as to all of the underlying claims brought by [P]laintiffs against PHS, Dr. Gerety and NMHI[.]” The court also stated that Leger’s prosecution of the indemnification claim “will not violate the prohibition against double recovery as [P]laintiffs have fully recovered what they could for their claims” and the damages they seek to recover from Appellants through the assignment are “not for the underlying claims brought by original [P]laintiffs, but for indemnification as a result of the damages PHS paid to [P]laintiffs for the negligence of [Appellants], which claim[s] are separate and distinct from the claims made by [P]laintiff[s] in the underlying cause of action[.]”

{14} In denying the motion to dismiss

discussed above, the court stated that “the indemnity claims in this matter are assignable because they are not personal injury claims,” but claims “separate and distinct from the underlying tort” and that the MMA’s presentation requirement and statute of repose were satisfied by PHS. In a separate order, the district court certified for interlocutory review the “issues of whether . . . the common law and/or [Section] 41-5-12 . . . prohibits the assignment of an indemnity claim against a qualified healthcare provider.” Appellants filed an application for interlocutory review, which this Court granted.

DISCUSSION

A. Principles of Statutory Construction

{15} Statutory construction is a question of law that we review de novo. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 10, 309 P.3d 1047. “When construing statutes, our guiding principle is to determine and give effect to legislative intent.” *Id.* ¶ 11 (internal quotation marks and citation omitted); see *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 25, 117 N.M. 346, 871 P.2d 1352 (“[W]e believe it to be the high duty and responsibility of the judicial branch of government to facilitate and promote the [L]egislature’s accomplishment of its purpose—especially when such action involves correcting an apparent legislative mistake.”); see also *In re Portal*, 2002-NMSC-011, ¶ 5, 132 N.M. 171, 45 P.3d 891 (“Statutes are to be read in a way that facilitates their operation and the achievement of their goals.” (internal quotation marks and citation omitted)); *D’Avignon v. Graham*, 1991-NMCA-125, ¶ 11, 113 N.M. 129, 823 P.2d 929 (explaining that “the cardinal rule of statutory construction is to determine legislative intent” and that New Mexico courts “have rejected formalistic and mechanistic interpretation of statutory language”).

{16} In performing this duty, we must consider the provisions at issue “in the context of the statute as a whole, including the purposes and consequences of the Act.” *Baker*, 2013-NMSC-043, ¶ 15; see *State v. Rivera*, 2004-NMSC-001, ¶ 13, 134 N.M. 768, 82 P.3d 939 (stating that courts must analyze a “statute’s function within a comprehensive legislative scheme” and may not consider subsections “in a vacuum” (internal quotation marks and citation omitted)); *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350 (“[A]ll parts of a statute must be read together to ascertain legislative intent. We are to read the statute in its entirety

and construe each part in connection with every other part to produce a harmonious whole.” (citation omitted)).

{17} “Rules of statutory construction dictate that when a statute’s language is clear and unambiguous and it conveys a clear and definite meaning, the statute must be given its plain and ordinary meaning.” *Key*, 1996-NMSC-038, ¶ 13. Our Supreme Court has admonished, however, that “courts must exercise caution in applying the plain meaning rule” because “[i]ts beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute’s meaning.” *Helman*, 1994-NMSC-023, ¶ 23; see *Baker*, 2013-NMSC-043, ¶ 15 (citing *Helman* for these “wise words of caution in applying the plain meaning rule”).

{18} *Helman* discussed at length the “plain meaning” and “rejection-of-literal-language” approaches to statutory construction, explaining that “the two approaches, correctly understood, can be viewed as complementary, not contradictory.” 1994-NMSC-023, ¶¶ 1-3, 18-26. The Court affirmed that “if the meaning of a statute is truly clear—not vague, uncertain, ambiguous, or otherwise doubtful—it is of course the responsibility of the judiciary to apply the statute as written.” *Id.* ¶ 22. “But where the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others.” *Id.* ¶ 3 (internal quotation marks and citations omitted). The Court explained:

In such a case, it can rarely be said that the legislation is indeed free from all ambiguity and is crystal clear in its meaning. While . . . one part of the statute may appear absolutely clear and certain to the point of mathematical precision, lurking in another part of the enactment, or even in the same section, or in the history and background of the legislation, or in an apparent conflict between the statutory wording and the overall legislative intent, there may be one or more provisions giving rise to genuine uncertainty

as to what the [L]egislature was trying to accomplish. In such a case, it is part of the essence of judicial responsibility to search for and effectuate the legislative intent—the purpose or object—underlying the statute.

Id. ¶ 23.

{19} The Court cautioned further, quoting from Judge Learned Hand “words which we believe provide the proper orientation that a court should bring to resolution of a dispute which turns on the purportedly plain meaning of a statute[.]”

There is no surer way to misread any document than to read it literally; in every interpretation we must pass between Scylla and Charybdis. . . . As nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation; and, although their words are by far the most decisive evidence of what they would have done, they are by no means final.

Id. ¶ 26 (internal quotation marks and citation omitted). Concluding that the statute at issue was ambiguous, despite “clarity and precision” in some aspects, *Helman* followed the “rejection-of-literal-language” approach to resolve the statutory construction issue presented. *Id.* ¶¶ 3, 27-29; see also *Ortiz v. Overland Express*, 2010-NMSC-021, ¶ 21, 148 N.M. 405, 237 P.3d 707 (acting pursuant to the judicial “duty to effectuate legislative intent” to correct the Legislature’s “apparent oversight” in having removed definitions; explaining that “[our Supreme] Court has consistently recognized that it is appropriate for the judiciary to look beyond the plain meaning of the statute’s language to effectuate legislative intent when the statute is ambiguous”).

B. The MMA

{20} The MMA’s stated purpose is “to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health care providers in New Mexico.” Section 41-5-2. As has been widely recognized, the MMA was enacted to address a perceived medical malpractice crisis in New Mexico by “providing a framework for tort liability with which the insurance industry could operate[.]” one that “restrict[s] and limit[s] plaintiffs’ rights under the common law” through “several procedural measures and

by establishing a limitation on full recovery for malpractice injury[.]” *Wilschinsky*, 1989-NMSC-047, ¶ 21; see *Cahn v. Berryman*, 2018-NMSC-002, ¶ 13, 408 P.3d 1012 (discussing concerns prompting the MMA’s enactment); *Baker*, 2013-NMSC-043, ¶ 16 (same); see also *Roberts v. Sw. Cmty. Health Servs.*, 1992-NMSC-042, ¶ 15, 114 N.M. 248, 837 P.2d 442 (“[T]he Act established new procedural and substantive restrictions on malpractice liability.” (internal quotation marks omitted)). As our Supreme Court explained in *Baker*:

To give effect to the purpose of the MMA, the Legislature created a balanced scheme to encourage health care providers to opt into the Act by conferring certain benefits to them, which it then balanced with the benefits it provided to their patients. The Legislature made professional liability insurance available to health care providers but conditioned availability to that insurance on a quid pro quo: health care providers could receive the benefits of the MMA only if they became qualified health care providers under the MMA and accepted the burdens of doing so.

2013-NMSC-043, ¶ 17 (alteration, internal quotation marks, and citation omitted).

{21} To be “qualified” under the MMA, a “health care provider,” as defined by Section 41-5-3(A), must comply with the requirements of Section 41-5-5, including by establishing “financial responsibility” and paying a surcharge into the “patient’s compensation fund” as described in Section 41-5-25. A health care provider who does not comply with the qualification requirements of Section 41-5-5 “shall not have the benefit of any of the provisions of the [MMA].” Section 41-5-5(C).

{22} The MMA expressly limits the aggregate amount recoverable “by all persons for or arising from any injury or death to a patient as a result of malpractice” to \$600,000 “per occurrence,” exclusive of punitive damages and medical care and related benefits. Section 41-5-6(A). It also provides that “[a]ny amount due from a judgment or settlement in excess of” the \$200,000 statutory limit on a healthcare provider’s personal liability “shall be paid from the patient’s compensation fund,” Section 41-5-6(D), and that “the fund shall only be expended for the purposes of and to the extent provided in the [MMA,]” Section 41-5-25(A).

C. The MMA Does Not Clearly and Unambiguously Limit the Scope of the Prohibition Against Assignment of Claims for Compensation

{23} Section 41-5-12, provides that “[a] patient’s claim for compensation under the [MMA] is not assignable.” The MMA does not define “patient’s claim for compensation” or “patient’s claim.” It does define “malpractice claim” (with exceptions not relevant here) to

include[] any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care which proximately results in injury to the patient, whether the patient’s claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death[.]

Section 41-5-3(C). And it defines “patient” as “a natural person who received or should have received health care from a licensed health care provider, under a contract, express or implied[.]” Section 41-5-3(E).

{24} Leger contends that “the Act clearly and unambiguously sought to limit its prohibition against assignment of claims to claims of a ‘patient,’ as that term is defined in the Act.” Leger’s textual argument is that the indemnification claim he seeks to prosecute is PHS’s claim, and because PHS is “a corporation and hospital” and not a “natural person,” PHS is not a “patient” and, therefore, the indemnification claim is not a “patient’s claim.” Even if the defini-

tion of “patient” is clear and unambiguous, that does not resolve the question of the Legislature’s intent concerning application of Section 41-5-12’s prohibition against assignment, especially given the absence of any definition of “[a] patient’s claim” or “claim for compensation” separate from the definition of “malpractice claim,” and the use of these terms in the context of the statute as a whole.

{25} Appellants contend that “patient’s claim” and “malpractice claim” are used interchangeably in Section 41-5-3(C) (i.e., the provision defining “malpractice claim” as “includ[ing] any cause of action . . . which proximately results in injury to the patient, whether the patient’s claim or cause of action sounds in tort or contract”), and that this reflects the Legislature’s intent in Section 41-5-12 to treat “patient’s claim” as the equivalent of “malpractice claim.” Precedents discussed below, interpreting the MMA as governing a claim brought by a non-patient and a hospital’s indemnification claim against a physician, notwithstanding the absence of statutory text specifically stating that such claims are subject to the MMA, arguably weaken Appellants’ equivalence argument. Nevertheless, the phrase “whether the patient’s claim or cause of action sounds in tort or contract” in Section 41-5-3(C) does suggest equivalence, and language used throughout the MMA reflects a statutory scheme addressing the liability of health care providers on claims arising in the first instance from “injury to the patient” resulting from medical malpractice (Section 41-5-3(C)), and contemplating litigation

commenced by a “patient” or a representative of the patient against a “health care provider.”¹

{26} Although the text and context of the statute as a whole provides support for the proposition that the Legislature intended equivalence in the terms “patient’s claim” and “malpractice claim,” we conclude that the statute is ambiguous, and the question of the Legislature’s intent concerning application of Section 41-5-12’s prohibition against assignment cannot be answered based on the MMA’s “literal language.” In cases construing the MMA, our Supreme Court has recognized that the Legislature has, at times, been “simply imprecise with its language” and refused to “parse the Legislature’s words in . . . a literal and mechanical manner” or to “rest [its] conclusions upon the plain meaning of the language if the intention of the Legislature suggests a meaning different from that suggested by the literal language of the law.” *Baker*, 2013-NMSC-043, ¶ 30 (alteration, internal quotation marks, and citation omitted). We turn now to the analysis employed in precedents interpreting the MMA “in the context of the statute as a whole, including the purposes and consequences of the Act.” *Id.* ¶ 15.

D. The Analysis Employed in Precedents Construing the MMA Requires the Conclusion That Leger’s Indemnification Claim Is Subject to All MMA Restrictions, Including the Prohibition Against Assignment

{27} In *Wilschinsky*, our Supreme Court applied statutory-construction principles to the MMA, including consideration of

¹See § 41-5-4 (“A patient or his representative having a malpractice claim for bodily injury or death may file a complaint in any court of law having requisite jurisdiction and demand right of trial by jury. . . . This section shall not prevent a patient or his representative from alleging a requisite jurisdictional amount in a malpractice claim filed in a court requiring such an allegation.”); § 41-5-13 (discussing a “claim for malpractice arising out of an act of malpractice”); § 41-5-7(A) (“In all malpractice claims where liability is established, the jury shall be given a special interrogatory asking if the patient is in need of future medical care and related benefits. . . . In actions upon malpractice claims tried to the court, where liability is found, the court’s findings shall include a recitation that the patient is or is not in need of future medical care and related benefits.”); § 41-5-7(B) (discussing a patient’s future medical care and related benefits “once a judgment is entered in favor of a patient . . . or a settlement is reached between a patient and health care provider”); § 41-5-10(A) (entitling health care providers to have a physical examination of the patient); § 41-5-14(A) (creating medical review commission “to provide panels to review all malpractice claims against health care providers covered by the [MMA]”); § 41-5-11(A) (providing for apportionment of the amount “each defendant is obligated to pay” on a “judgment in favor of the patient” where the amount paid in advance “exceeds the liability of the defendant or the insurer making it”); § 41-5-15(A) (“No malpractice action may be filed in any court against a qualifying health care provider before application is made to the medical review commission and its decision is rendered.”); § 41-5-21 (“No rule shall be adopted . . . which requires a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.”); § 41-5-22 (discussing “[t]he running of the applicable limitation period in a malpractice claim”); § 41-5-23 (“In any malpractice claim where the panel has determined that the acts complained of were or reasonably might constitute malpractice and that the patient was or may have been injured by the act, the panel, its members, the director and the professional association concerned will cooperate fully with the patient in retaining a physician qualified in the field of medicine involved, who will consult with, assist in trial preparation and testify on behalf of the patient, upon his payment of a reasonable fee to the same effect as if the physician had been engaged originally by the patient.”).

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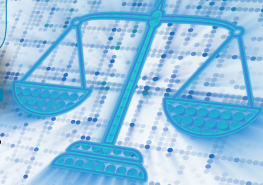
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2.0 G 1.0 EP



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\$39 Audit/Non-member not seeking CLE credit

\$136 Immigration Law Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$143 Live Fee

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Real Property Institute: Taking New Mexico Real Property Issues into the Next Decade



Friday, Dec. 6, 2019

8:30 a.m.–3 p.m.

5.2 G

Live at the State Bar Center

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\$99 Audit/Non-member not seeking CLE credit

\$205 Real Property Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

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YLD/IP: Craft Beer and Creatives : The Hipster Side of Intellectual Property Law



Friday, Dec. 6, 2019

8:30 a.m.–4:15 p.m.

6.0 G

New Mexico History Museum

113 Lincoln Ave., Santa Fe

\$99 Audit/Non-member not seeking CLE credit

\$198 Special Rate for Young Lawyers Division and Intellectual Property Section members

\$251 Live Fee

Using Metrics and Analytics for Ethical Solo and Small Firm Marketing



Monday, Dec. 16, 2019

3–4 p.m.

1.0 EP

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Lunchbox Series: special pricing for section members

\$33 Solo and Small Firm Section members

\$49 Live Fee

\$55 Webcast Fee



2019 Mock Meeting of the Ethics Advisory Committee

Tuesday, Dec. 17, 2019

9–11 a.m.

2.0 EP



Live at the State Bar Center
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\$39 Audit/Non-member not seeking CLE credit

\$93 Ethics Advisory Committee members, Government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$98 Live Fee

\$109 Webcast Fee

Access to Justice: Best Path Forward: Point–Counterpoint

Tuesday, Dec. 17, 2019

11:15 a.m.–12:15 p.m.

1.0 EP

Live at the State Bar Center
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\$39 Audit/Non-member not seeking CLE credit

\$47 Government and legal services attorneys, Young Lawyers Division and Paralegal Division members

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Lawyers Professional Liability and Insurance Committee CLE

Tuesday, Dec. 17, 2019

1–3 p.m.

2.0 EP

Live at the State Bar Center
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\$39 Audit/Non-member not seeking CLE credit

\$93 Lawyers Professional Liability and Insurance Committee members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$98 Live Fee

\$109 Webcast Fee



Speaking to Win: The Art of Effective Speaking for Lawyers

Wednesday, Dec. 18, 2019

9 a.m.–4:30 p.m.

5.0 G 1.0 EP



Live at the State Bar Center
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\$99 Audit/Non-member not seeking CLE credit

\$239 Government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$251 Live Fee

\$279 Webcast Fee

2019 Trial Practice Institute: Trial Know How

Thursday, Dec. 19, 2019

9 a.m.–5:15 p.m.



Live at the State Bar Center
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\$99 Audit/Non-member not seeking CLE credit

\$251 Trial Law Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$262 Live Fee

\$291 Webcast Fee

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Friday, Dec. 20, 2019

8:30 a.m.–5 p.m.

4.5 G **1.5 EP**

Live at the State Bar Center

Also available via Live Webcast!

\$99 Audit/Non-member not seeking CLE credit

\$239 NREEL Practice Section members, government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$271 Live Fee

\$279 Webcast Fee

Fluff is for Pillows, Not Legal Writing



Thursday, Dec. 26, 2019

1–4:15 p.m.

3.0 G

Live at the State Bar Center

Also available via Live Webcast!

\$39 Audit/Non-member not seeking CLE credit

\$136 Government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$143 Live Fee

\$159 Webcast Fee

Everything I Need to Know about Legal Ethics I Learned from the Kardashians



Thursday, Dec. 26, 2019

9 a.m.–12:15 p.m.

3.0 EP

Live at the State Bar Center

Also available via Live Webcast!

\$39 Audit/Non-member not seeking CLE credit

\$136 Government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$143 Live Fee

\$159 Webcast Fee

Find it Fast and Free (and Ethically) with Google, Fastcase 7 and Social Media Sites



Friday, Dec. 27, 2019

9 a.m.–4:15 p.m.

4.0 G **2.0 EP**

Live at the State Bar Center

Also available via Live Webcast!

\$99 Audit/Non-member not seeking CLE credit

\$239 Government and legal services attorneys, Young Lawyers Division and Paralegal Division members

\$271 Live Fee

\$279 Webcast Fee

Remaining Opportunities in the First Three-Year Cycle to Attend the Disciplinary Board's Required Trust Accounting CLE

The Basics of Trust Accounting:



How to Comply with Disciplinary Board Rule 17-204

1.0 EP

\$55 Standard Fee

\$65 Webcast Fee

Effective Dec. 31, 2016, the New Mexico Supreme Court adopted modifications to Rule 17-204 NMRA which requires that an attorney must take a trust accounting class at least once every three years, or within the first year of being licensed in New Mexico. This program fulfills the requirement of Rule 17-204 NMRA, and is one of the New Mexico Disciplinary Board's ongoing programs designed to educate attorneys on proper practices and procedures. Currently, the State Bar of New Mexico Center for Legal Education is the only approved course provider. Please see below for upcoming opportunities to attend the required ethics course. For more information, lawyers should carefully read Rule 17-204 NMRA. The first compliance deadline for licensed attorneys is Dec. 31, 2019.

Register online at www.nmbar.org/CLE or call 505-797-6020

Remaining Dates and times:

Friday, Nov. 15, 9–10 p.m.

Monday, Dec. 16, 9–10 a.m.

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RUFADAA: The Act and Its Far-Reaching Effects

Thursday, Nov. 14, 2019

Noon–1 p.m.

1.0 EP

\$55 Standard Fee

Transitions to Retire for Solo and Small Firm Practitioners

Wednesday, Dec. 18, 2019

Noon–1 p.m.

0.5G 0.5 EP

\$55 Standard Fee

Managing Cybersecurity Risks

Wednesday, Nov. 20, 2019

Noon–1 p.m.

1.0 G

\$55 Standard Fee

Preparing for Mediation

Monday, Dec. 23, 2019

Noon–1 p.m.

1.0 G

\$55 Standard Fee

ADR Excellence: Does Practice Make Perfect?

Tuesday, Dec. 3, 2019

Noon–1:30 p.m.

1.5 G

\$82 Standard Fee

The Paperless Law Firm— A Digital Dream

Monday, Dec. 30, 2019

11 a.m.–Noon

1.0 G

\$89 Standard Fee

To Idemnify or to Hold Harmless?

Friday, Dec. 13, 2019

11 a.m.–Noon

1.0 G

\$89 Standard Fee

Social Media as Investigative Research and Evidence

Monday, Dec. 30, 2019

2–2 p.m.

1.0 G

\$89 Standard Fee

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Friday, Nov. 22

How to Practice Series: Estate Planning

5.0 G 2.0 EP

8:30 a.m.–4:40 p.m.

\$309 Standard Fee

Tax Pitfalls for the Small Business Attorney (2019)

3.0 G

9 a.m.–12:15 p.m.

\$159 Standard Fee

Deal or No Deal? Ethics at Trial with Joel Oster

1.0 EP

1–2 p.m.

\$49 Standard Fee

Wednesday, Dec. 11

(Government and Civil Attorneys)

Bridge the Gap Mentorship Program

5.0 G 1.0 EP

9 a.m.–4:30 p.m.

\$279 Standard Fee

(DAs and PDs)

Bridge the Gap Mentorship Program

3.0 G 1.0 EP

12:30–4:45 p.m.

\$188 Standard Fee

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legislative intent and policy implications, see 1989-NMSC-047, ¶¶ 21-26, where “the [L]egislature did not directly address potential recovery by third parties,” *id.* ¶ 22; “[n]o language in the [MMA] specifically addresses the issue of third-party recovery for an act of malpractice[.]” *id.* ¶ 20; and “the activity at issue falls neither within the articulated ambit of the statutory definition, nor within the ambit of the exclusion[.]” *id.* ¶ 24. In reaching its conclusion that “the Legislature intended to cover all causes of action arising in New Mexico that are based on acts of malpractice[.]” our Supreme Court explained that “[w]hen we find, as we do here, a clash between the intent of the Legislature and its own definitional section, we seek to harmonize the two.” *Id.* ¶ 26.

{28} *Wilschinsky* addressed the question whether the MMA applies to “claims based on malpractice asserted by non-patients against a physician who is qualified under the [MMA.]” *Id.* ¶ 1. In analyzing the definition of “malpractice claim” in the context of the MMA as a whole and the policy implications flowing from its interpretation, our Supreme Court noted several factors impacting the analysis, including the following: (a) “the nonmedical nature of the articulated exclusion in paragraph C [of Section 41-5-3] is at least some evidence the [L]egislature foresaw and intended broad application of the concept of a ‘malpractice claim’”; (b) “if we recognize a third-party cause of action for the [plaintiffs] and it is not covered by the Act, a third party would be placed in a better position to achieve full recovery from an act of malpractice than would the patient malpracticed upon”; and (c) “the clear intent of the [L]egislature, as articulated in Section 41-5-2, was to make malpractice insurance available to health care providers.” *Wilschinsky*, 1989-NMSC-047, ¶ 25. Finding “compelling” the “underlying logic” of a Florida case reasoning that “the gravamen of the third-party action is predicated upon the allegation of professional negligence by a practicing physician[.]” *id.* ¶ 27 (internal quotation marks and citation omitted), our Supreme Court held that the third-party cause of action at issue “falls within the purpose of the [MMA] and should be pursued according to its guidelines[.]” *id.* ¶ 28.

{29} In *Duarte-Afara* this Court followed *Wilschinsky*’s instruction that “a claim may be construed as a malpractice claim within the meaning of the MMA if ‘the gravamen of the third-party action is predicated upon the allegation of

professional negligence by a practicing physician” in determining that “the gravamen of [the m]edical [c]enter’s equitable indemnification claim is predicated upon the allegation that [d]octors negligently caused, and were partly liable for, [the patient’s] injuries” and held that the medical center’s equitable indemnification claim against doctors “is a malpractice claim as that term is used in the MMA” and is subject to the MMA’s statute of repose. *Duarte-Afara*, 2011-NMCA-112, ¶ 15. “We reach[ed] this conclusion in part, so as to carry out the policy goals the Legislature intended by enacting the MMA and [its statute of repose,]” reasoning that, “[i]n effect, the [m]edical [c]enter’s equitable indemnification claim exposes [d]octors to the identical liability to which they were subject under [the patient]’s claims[.]” which “were properly dismissed as untimely.” *Id.* ¶ 16. Permitting the equitable indemnification claim to proceed where the patient’s claim could not would “elevate form over substance and frustrate the underlying concerns which motivated our Legislature to enact the MMA and [its statute of repose provision].” *Id.*

{30} *Duarte-Afara* recognized that an indemnification claim must allege that the defendant caused “direct harm to a third party,” the liability for which harm was discharged by the party seeking indemnification, and that “a cause of action for indemnification is separate and distinct from the underlying tort.” *Id.* ¶¶ 14, 18. Nevertheless, *Duarte-Afara* held that “the controlling inquiry in determining whether a claim constitutes a ‘malpractice claim’ under the MMA is merely whether the gravamen of the claim is predicated upon the allegation of professional negligence.” *Id.* ¶ 18.

{31} In *Baker*, our Supreme Court interpreted the MMA’s definition of “health care provider,” which the plaintiffs contended did not include the business organizations under which the defendant doctors operated, “in the context of the statute as a whole, including the purposes and consequences of the Act.” 2013-NMSC-043, ¶¶ 14-15. The Court concluded that “several provisions in the Act indicate that the Legislature intended professional medical organizations . . . to be covered by the Act,” rejecting the plaintiffs’ argument that the business organizations at issue “are not entitled to qualify as ‘health care providers’ under the MMA” because they “do not fit into any” category included in Section 41-5-3(A)’s definition and “were

not specifically included by the Legislature in any other part of the MMA[.]” *Baker*, 2013-NMSC-043, ¶¶ 1, 14, 31.

{32} Among other points made in the analysis, *Baker* stated that, “[i]n light of the Act’s purpose, we can discern no reason why the Legislature would intend to cover individual medical professionals under the Act while excluding the business organizations that they operate under to provide health care” and that nothing in the MMA indicated legislative intent “to impair or eliminate the ability of physicians to practice under the umbrella of a professional entity.” *Id.* ¶ 21 (internal quotation marks and citation omitted). The Court also rejected the plaintiffs’ interpretation on the ground that it “conflicts with both the Legislature’s stated purpose and its goal to assure that providers of health care are adequately covered in New Mexico[.]” stating that the Court would not “construe a statute to defeat its intended purpose.” *Id.* (alteration, internal quotation marks, and citation omitted).

{33} In the years that have passed since these decisions issued, interpreting as within the MMA claims that fall outside the MMA’s scope under a plain-language construction, the Legislature has taken no action to correct them.

{34} Appellants argue that the analysis employed in these and other decisions construing the MMA support their position that Section 41-5-12 must be interpreted to prohibit assignment of all “malpractice claims” subject to the MMA, not just those claims assigned by a “patient.” Leger attempts to distinguish these cases by characterizing them as having “read language and limitations into the Act that are not expressly stated in the Act[.]” “supplement[ing] the Act where the Legislature was silent[.]” while characterizing an interpretation of the anti-assignment provision that includes in its prohibition an indemnification claim based on medical malpractice as an attempt “to remove express provisions in the Act.” He contends that “the relief sought by Appellants here would require this Court to engage in inappropriate judicial surgery to excise a key, defined term inserted by the Legislature into [S]ection 41-5-12.” We disagree with these characterizations. Even assuming that Leger’s inclusion-versus-excision characterization were accurate, it makes no difference to the analysis. As discussed, we must perform our “high duty and responsibility . . . to facilitate and promote the [L]egislature’s accomplishment of its

purpose—especially when such action involves correcting an apparent legislative mistake[.]” *Helman*, 1994-NMSC-023, ¶ 25, “even though this requires the rejection of words or the substitution of others[.]” *id.* ¶ 3 (internal quotation marks and citation omitted).

{35} Leger also argues that the indemnification claim falls outside Section 41-5-12’s prohibition on assignment because it is not, and is separate and distinct from, a personal injury claim under the common law, and the Legislature enacted Section 41-5-12 to codify a general common-law rule prohibiting assignment of personal injury claims. We do not agree.

{36} Precedents interpreting the MMA establish that neither the MMA’s literal language nor the character and treatment of a claim under the common law is dispositive of whether a claim is subject to the MMA’s restrictions and limitations. If the MMA’s literal language controlled, *Wilschinsky* would not have held that the MMA’s restrictions and limitations apply to a non-patient’s claim for injury resulting from medical malpractice, given statutory text defining “malpractice claim” as a cause of action arising from an “injury to the patient” and the absence of language that “specifically addresses the issue of third-party recovery for an act of malpractice.” *Wilschinsky*, 1989-NMSC-047, ¶¶ 20-28; see also *Baker*, 2013-NMSC-043, ¶¶ 12-21 (rejecting argument that MMA does not apply to professional medical organizations not specifically identified in MMA’s definition of “health care provider”). And if the common law’s treatment of indemnification claims as “separate and distinct from the underlying tort” were dispositive of the question of the MMA’s application to a claim, *Duarte-Afara* would not have held that the MMA’s restrictions and limitations apply to a hospital’s indemnification claim against doctors based on “the gravamen of the claim [a]s predicated upon the allegation of professional negligence[.]” notwithstanding the “separate and distinct” nature of indemnification claims under the common law. 2011-NMCA-112, ¶ 18.

{37} In light of these precedents, we cannot agree that use of the word “patient” in Section 41-5-12 reflects the Legislature’s intent to “codify” a general common-law

rule prohibiting assignment of personal injury claims or that the common law’s treatment of indemnification claims as “separate and distinct from the underlying tort” requires the conclusion that the Legislature specifically intended to limit application of the prohibition against assignment of claims covered by the MMA to claims falling within the common-law rule prohibiting assignment of personal injury claims. Given *Duarte-Afara*’s holding that the common law is not dispositive of the question whether a claim is subject to the MMA’s restrictions and limitations, we see no basis for concluding that the common law is dispositive of whether and how particular MMA restrictions and limitations apply. While we presume that the Legislature was aware of existing law when it enacted the MMA, we also presume that the Legislature enacted the MMA to *change*, not to codify, the existing law. See, e.g., *Incorporated Cty. of Los Alamos v. Johnson*, 1989-NMSC-045, ¶ 4, 108 N.M. 633, 776 P.2d 1252 (“We presume that the [L]egislature is well informed as to existing statutory and common law and does not intend to enact a nullity, and we also presume that the [L]egislature intends to change existing law when it enacts a new statute.” (emphasis added)); *State ex rel. Bird v. Apodaca*, 1977-NMSC-110, ¶ 12, 91 N.M. 279, 573 P.2d 213 (“We assume that the Legislature is well informed as to existing statutory and common law, and that it does not intend to enact useless statutes[.] Furthermore, when the Legislature enacts a new statute we presume that it intended to change the law as it previously existed.” (emphases added) (citations omitted)).

{38} Following the rule that “the controlling inquiry in determining whether a claim constitutes a ‘malpractice claim’ under the MMA is merely whether the gravamen of the claim is predicated upon the allegation of professional negligence[.]” *Duarte-Afara*, 2011-NMCA-112, ¶ 18, we conclude that, where an indemnification claim constitutes a “malpractice claim” subject to the MMA, there is no basis for treating the common law as dispositive in determining how the MMA’s restrictions and limitations apply to the claim. Cf. *Cahn*, 2018-NMSC-002, ¶¶ 24-25 (explaining that the dissent’s contention

that the Court should apply a “background statute of limitations” to resolve an issue not clearly addressed in the MMA “does not withstand scrutiny” because “our Legislature enacted the MMA and its statute of repose, in part, to *supplant the very background statute of limitations the dissent insists should control*” and that “*applying the background statute of limitations is, if anything, the result most inconsistent with the Legislature’s intentions* and the result most intrusive and susceptible to criticism based on separation of powers principles” (emphases added)).²

{39} We also see no evidence of legislative intent to create subclasses of “malpractice claims,” with some claims subject to some MMA restrictions and not subject to other restrictions. As discussed, the MMA defines “patient,” but it does not define “patient’s claim” or “patient’s claim for compensation” as something different from a “malpractice claim.” Nor is there any evidence of legislative intent to treat claims subject to the MMA differently depending on the holder of the claim at a given point in time. Leger’s interpretation of Section 41-5-12 as prohibiting assignment only by a “patient” requires the conclusion that the non-patient in *Wilschinsky* could assign a claim a “patient” could not assign. The result would be an “unreasonable classification” contrary to the Legislature’s intention “to cover all causes of action arising in New Mexico that are based on acts of malpractice.” *Wilschinsky*, 1989-NMSC-047, ¶ 26; see *id.* ¶ 25 (“[I]f we recognize a third-party cause of action for the [plaintiffs] and it is not covered by the Act, a third party would be placed in a better position to achieve full recovery from an act of malpractice than would the patient malpracticed upon.”); see also *Duarte-Afara*, 2011-NMCA-112, ¶ 16 (permitting equitable indemnification “claim to proceed where [the patient’s] claim could not, would . . . elevate form over substance and frustrate the underlying concerns which motivated our Legislature to enact the MMA and [its statute-of-repose provision]”). If the Legislature enacted a statutory scheme “to cover all causes of action arising in New Mexico that are based on acts of malpractice” by a qualified health care provider, but with the

²As noted, the MMA applies only to claims against qualified health care providers. See § 41-5-5(C) (“A health care provider not qualifying under this section shall not have the benefit of any of the provisions of the [MMA] in the event of a malpractice claim against it.”); *Roberts*, 1992-NMSC-042, ¶ 9 (“[O]nly health care providers meeting the Act’s qualifications, Section 41-5-5(A), may claim the benefits of the Act, Section 41-5-5(C).”). In malpractice cases in which the MMA does not apply, courts may determine that indemnification claims should be treated differently from what Leger refers to as “patient’s claims.” The question presented here concerns only treatment of indemnification claims subject to the MMA.

intention of treating claims covered by the MMA differently depending on different criteria, it would have articulated those criteria, rather than providing a single definition of “malpractice claim.” *Wilschinsky*, 1989-NMSC-047, ¶ 26.

{40} The foregoing analysis leads us to conclude that the Legislature intended the MMA’s requirements and restrictions to apply to all “malpractice claims” covered by the MMA (which the indemnification claim at issue undisputedly is) and, accordingly, that Section 41-5-12 bars assignment of all “malpractice claims” for compensation covered by the MMA. Given the Legislature’s intention “to cover all causes of action arising in New Mexico that are based on acts of malpractice[.]” *Wilschinsky*, 1989-NMSC-047, ¶ 26, and that “the controlling inquiry in determining whether a claim constitutes a ‘malpractice claim’ under the MMA is merely whether the gravamen of the claim is predicated upon the allegation of professional negligence[.]” *Duarte-Afara*, 2011-NMCA-112, ¶ 18, we can discern no reason why the Legislature would intend to subject indemnification claims to every MMA restriction except one—Section 41-5-12’s prohibition against assignment—especially when the result would be an “unreasonable classification” permitting non-patients to do something forbidden to a patient. *See Wilschinsky*, 1989-NMSC-047, ¶ 26; *Duarte-Afara*, 2011-NMCA-112, ¶ 16.

{41} Appellants raise other concerns about the potential consequences of adopting Leger’s interpretation of Section 41-5-12. Leger dismisses these concerns as a “wholly speculative and implausible[] parade of horrors that might someday arise from allowing the assignment of a claim under the Act[.]” But our judicial duty to determine and give effect to the Legislature’s intent in the face of ambiguous text requires that we consider “the context of the statute as a whole, including the purposes and consequences of the Act.” *Baker*, 2013-NMSC-043, ¶ 15 (emphasis added). And there are potential consequences of the interpretation Leger advances that raise legitimate grounds for concern; for example, opening the door to a method of “claim laundering” whereby what Leger refers to as a “patient’s claim” may be transformed into a different claim through assignment as part of a settlement in which the patient recovers 100% of her damages for the malpractice of health care providers sued and not sued by the patient, which claim the “patient” (or one acting

on behalf of the “patient”) may prosecute separately and, in the process, potentially recover more than 100% of her damages for the same malpractice alleged to have resulted in “injury to the patient.” *See Duarte-Afara*, 2011-NMCA-112, ¶ 16 (“In effect, [the m]edical [c]enter’s equitable indemnification claim exposes [d]octors to the identical liability to which they were subject under [the patient]’s claims.”).

{42} The amount of the settlement is not in the record. And we do not know what amount, if any, Leger might have recovered in the third-party action. But Leger has stated that “PHS paid amounts to cover 100% of the underlying liability claim,” including “for the actions of [Appellants].” Although the MMA contains text indicating legislative intent to apportion amounts among qualified health care providers under certain circumstances, *see* § 41-5-11(A) (providing for apportionment of the amount “each defendant is obligated to pay” on a “judgment in favor of the patient” where the amount paid in advance “exceeds the liability of the defendant or the insurer making it”), and *Duarte-Afara* held that a hospital’s indemnification claim against doctors is a claim subject to the MMA’s restrictions, we see no indication that the Legislature intended to allow a “patient” (or one acting on behalf of the “patient”) to prosecute indemnification claims and recover more than 100% of her damages for the same malpractice alleged to have resulted in “injury to the patient.” And such a result seems contrary to the purposes for which the MMA was enacted and the “balanced scheme” the Legislature created to implement it. *See Baker*, 2013-NMSC-043, ¶ 17; *Wilschinsky*, 1989-NMSC-047, ¶ 21.

{43} Although the district court certified only the assignment issue for interlocutory review, Appellants argued in their application and subsequent briefing that Leger’s failures to present a claim against Appellants to the Medical Review Commission and file it within the MMA’s statute of repose bar Leger from prosecuting the indemnification action. Our disposition of the assignment issue makes it unnecessary to reach those issues.

E. The Dissent

{44} The dissent suggests that we have failed “to closely examine the words in the Act” and chosen instead to “depend[] on broad generalizations derived from the judiciary’s added gloss in construing the MMA.” Dissent Op. ¶ 59. The opinion discusses at length numerous principles

of statutory construction articulated in New Mexico appellate decisions, including those applied in precedents interpreting the MMA, and considers the statutory text at issue in the context of the MMA as a whole before concluding that the MMA’s plain text does not unambiguously answer the question presented.

{45} As for the opinion’s consideration of precedents construing the MMA, we are obliged to follow them, along with precedents articulating and applying principles of statutory construction. *Alexander v. Delgado*, 1973-NMSC-030, ¶¶ 9-10, 84 N.M. 717, 507 P.2d 778 (stating, in discussing the role of precedent, that “no reason has been advanced which would justify [the Court of Appeals] in refusing to follow the New Mexico Supreme Court decisions” (internal quotation marks and citation omitted)). Furthermore, the treatise on statutory construction cited in the dissent states that “[t]he most conclusive statutory interpretations come from state court constructions of state statutes”; “judicial construction of a statute becomes part of the legislation from the time of its enactment”; and “even an inferior court interpretation may be persuasive.” 2B Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 49:4, at 20-22 (7th ed. 2012) (emphasis added).

{46} We reject the dissent’s view that a court interpreting statutory text that does not unambiguously answer the question presented may consider only the law in effect at the time of enactment. Dissent Op. ¶¶ 59, 62, 66. We do not suggest that the precedents discussed above unambiguously answer the question presented. But the opinion’s analysis is most consistent with the statutory text and with what applicable precedents say about statutory construction and the MMA.

The Plain-Language Argument

{47} The dissent argues that “we can and should give effect to the Legislature’s choice of the words ‘patient’s claim’ in Section 41-5-12[.]” Dissent Op. ¶ 58. After concluding that “a ‘patient’s claim’ is a natural person’s cause of action under the MMA, arising from the health care that person received or should have received from a health care provider[.]” *id.* ¶ 60, the dissent asserts that “[t]he reference to ‘patient’s claim’ within the definition of ‘malpractice claim’ does not . . . render the terms equivalent” because “[r]eading the definition in this way would render many of its words superfluous,” *id.* ¶ 61.

{48} As noted, the MMA does not define “patient’s claim for compensation” or “patient’s claim.” And the dissent’s reading itself renders superfluous the phrase “whether the patient’s claim or cause of action sounds in tort or contract” in the MMA’s definition of “malpractice claim” as “includ[ing] any cause of action arising in this state against a health care provider for medical treatment . . . which proximately results in injury to the patient, *whether the patient’s claim or cause of action sounds in tort or contract*.” Section 41-5-3(C) (emphasis added). These words, and their placement, constitute at least some textual evidence that the Legislature understood a “malpractice claim” covered by the MMA as one that originates as a claim by a “patient” against a healthcare provider to which the Act applies. *Cf. Cummings v. X-Ray Assocs. of N.M.*, 1996-NMSC-035, ¶ 36, 121 N.M. 821, 918 P.2d 1321 (“A malpractice claim is an attempt by a patient to obtain something he or she does not yet possess: monetary compensation for an injury caused by the negligence of a health care practitioner.”). The Legislature’s choice to use these words in Section 41-5-3(C) undermines the dissent’s criticism of Appellants’ argument that the Legislature had only “‘patient’s claims’ in mind when the MMA was enacted” as “contrary to the language in the Act.” Dissent Op. ¶ 62. So too does the Legislature’s choice to use language throughout the MMA (cited above in footnote one) reflecting a scheme to address (in ways that differ from the common law) claims arising from “injury to the patient” resulting from malpractice by a “health care provider” subject to the MMA (Section 41-5-3(C)), and contemplating litigation commenced by a “patient” or a representative of the patient against a “health care provider.” *See, e.g.*, § 41-5-4 (“A patient or his representative having a malpractice claim for bodily injury or death may file a complaint in any court of law having requisite jurisdiction and demand right of trial by jury. . . . This section shall not prevent a patient or his representative from alleging a requisite jurisdictional amount in a malpractice claim filed in a court requiring such an allegation.”) (emphases added).

{49} The argument that the Legislature intended equivalence between the undefined term “patient’s claim” and the defined term “malpractice claim” is not frivolous, and the plain language does not resolve the issue presented free from all doubt. *See Helman*, 1994-NMSC-023, ¶ 23 (explaining that the “beguiling simplicity” of the plain language canon of construction “may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute’s meaning”). Although we cannot say that the MMA’s plain language unambiguously equates “patient’s claim” with “malpractice claim,” we can say that the plain text of the MMA, in the only provision that defines claims subject to the Act as well as in the Act as a whole, provides support for that interpretation. And while the MMA uses both “patient’s claim” and “malpractice claim,” the dissent’s conclusion that “the language of the MMA supports a distinction between ‘patient’s claims’ and ‘malpractice claims,’” Dissent Op. ¶ 63, does not demonstrate, free of ambiguity, legislative intent to exclude from Section 41-5-12 every claim falling within the MMA’s definition of “malpractice claim” except those held by a “patient” at the moment of assignment. *See Helman*, 1994-NMSC-023, ¶¶ 26-29 (noting the dangers of literal readings, instructing that “[a]s nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation[.]” and concluding that the statute at issue was ambiguous, despite “clarity and precision” in some aspects (internal quotation marks and citation omitted)); *Roberts*, 1992-NMSC-042, ¶ 17 (rejecting as “ignor[ing] a cardinal principle of statutory construction, i.e., that the Act should be read as a whole, giving effect to each portion of the statute” the argument that the Legislature acted “purposefully” in “omitt[ing] the word ‘qualified’ from the Act’s statute of limitations and that this omission indicates that the [L]egislature intended the statute to apply to all health

care providers, regardless of whether the particular health care provider chose to become qualified” (citation omitted)).

{50} The dissent contends that judicial interpretation of a statute is “a thin reed upon which to lean in effectuating the legislative intent behind Section 41-5-12.” Dissent Op. ¶ 67 (quoting *State ex rel. State Eng’r v. Lewis*, 1996-NMCA-019, ¶ 13, 121 N.M. 323, 910 P.2d 957, as stating that “we must interpret the language of a statute as the Legislature understood it at the time it was enacted”). As noted, however, the treatise cited in the dissent teaches that “the most conclusive statutory interpretations come from state court constructions of state statutes” and “[j]udicial construction of a statute becomes part of the legislation from the time of its enactment.” 2B Singer, *supra*, § 49:4, at 20-21.³ Also worth noting in this regard is the dissent’s statement that “the Legislature doubtless did not have *Wilschinsky*-type claims in mind when it enacted Section 41-5-12 in 1976 because these claims were not recognized by our Supreme Court until 1989.” Dissent Op. ¶ 67. Although the observation makes sense as a temporal matter, it undermines the dissent’s insistence on an intended distinction between “patient’s claim” and “malpractice claim” based, in part, on language used in Section 41-5-3(C)’s definition “indicat[ing] that ‘malpractice claim’ is wide sweeping, encompassing *all* causes of action against a health care provider based on acts of malpractice that proximately result in injury to the patient.” Dissent Op. ¶ 61. If the Legislature did intend to distinguish “patient’s claim” from any other claim constituting a “malpractice claim” and to provide different treatment for different types of claims falling within the definition of “malpractice claim,” it was capable of doing so, as the dissent asserts in its argument concerning the Legislature’s language choices. It seems entirely plausible that the Legislature’s use of “patient’s claim” in Section 41-5-12 represents another instance in which the Legislature was “simply imprecise with its language.” *See Baker*, 2013-NMSC-043, ¶ 30.

³The dissent’s citation to *Lewis*, 1996-NMCA-019, ¶ 16, in criticizing Appellants’ arguments concerning the fiscal impact of an interpretation of Section 41-5-12 that permits assignment of indemnification claims seems misplaced. Dissent Op. ¶ 65. The Legislature is, of course, the governmental branch with the institutional capacity and competence to assess the fiscal impact of its enactments. But the statement in *Lewis* cited by the dissent on this point addresses “the consequences of a legislative policy embodied in an unambiguous statute[.]” *Lewis*, 1996-NMCA-019, ¶ 16. In this case, the text does not unambiguously answer the question presented. Yet it remains “the high duty and responsibility of the judicial branch of government to facilitate and promote the [L]egislature’s accomplishment of its purpose[.]” *Helman*, 1994-NMSC-023, ¶ 25, and to do so by considering Section 41-5-12 “in the context of the statute as a whole, including the purposes and consequences of the Act[.]” *Baker*, 2013-NMSC-043, ¶ 15.

Arguments Concerning “Legal Reality,” Common Law, and Policy

{51} The dissent’s assertions concerning “the legal reality in which the MMA was adopted,” Dissent Op. ¶ 62, and “the common law when the MMA was enacted,” Dissent Op. ¶ 66, do not answer the question presented. There is no dispute that “around the time the MMA was enacted, indemnity and contribution claims certainly were litigated in the medical malpractice context.” Dissent Op. ¶ 62. Nor is there a dispute concerning the assignability of “choses in action” under the common law. Dissent Op. ¶ 66. But the question we are charged with answering is what the Legislature intended in enacting the MMA, not what was litigated in the medical malpractice context when the MMA was enacted or what was—and is—allowed under the common law. As the opinion notes, the MMA applies only to claims against qualified health care providers. Section 41-5-5(C); *Roberts*, 1992-NMSC-042, ¶ 17. This means that cases involving allegations of medical malpractice against health care providers not qualified under the MMA will be litigated under the common law, with claims against government actors subject to the limitations and restrictions of the Tort Claims Act, NMSA 1978, §§ 41-4-1 to 30 (1976, as amended through 2015). See, e.g., *Maestas v. Zager*, 2007-NMSC-003, ¶¶ 16-18, 141 N.M. 154, 152 P.3d 141. Although the Legislature provided incentives for health care providers to satisfy the requirements necessary for the MMA to apply, there are medical malpractice cases to which the MMA does not apply. There is no dispute that the MMA applies to this case; the question is whether the MMA permits assignment of malpractice claims not held by a “patient” at the time of assignment.

{52} The dissent states that “the majority assumes that the non-assignability provision is a benefit that inures to health care providers” and that it is “a false premise that the non-assignability provision is a restriction” because “the non-assignability provision has not been identified by our courts as a benefit to health care providers” and “this provision seems designed not to benefit health care providers but to protect patients.” Dissent Op. ¶ 64. Section 41-5-12 plainly reads as a restriction or limitation. Nevertheless, there is no reason to believe that the MMA confers no “benefits” other than those mentioned in *Baker*. Furthermore,

even if the common law’s proscription against assignment of personal injury claims is meant to benefit plaintiffs in cases litigated under the common law, this does not require the conclusion that the Legislature did not intend Section 41-5-12 to benefit health care providers in cases to which the MMA applies. See *Roberts*, 1992-NMSC-042, ¶ 14 (disagreeing that in “arguably” codifying a common law rule in the MMA, “the [L]egislature did not intend to confer a ‘benefit’ on qualified health care providers[.]” explaining that the argument erroneously assumes that “the [L]egislature mechanistically enacted the common law and, thus, did not confer a benefit on qualified health care providers” when “it is equally plausible that the [L]egislature, in response to the perceived medical malpractice crisis, chose the time of the negligent act rule specifically to confer its benefit on qualified health care providers”).

{53} We are aware of the principles cited by the dissent concerning interpretation of statutes against the background of the common law. As the opinion notes, however, we also presume that the Legislature enacted the MMA to change, not to codify, the existing law. See *Johnson*, 1989-NMSC-045, ¶ 4; *Bird*, 1977-NMSC-110, ¶ 12; cf. *Cahn*, 2018-NMSC-002, ¶¶ 24-25. An interpretation of the MMA that incorporates everything allowed under the common law unless expressly prohibited seems incompatible with a scheme clearly intended to limit common-law rights, recoveries, and the costs of health care in New Mexico. See, e.g., *Roberts*, 1992-NMSC-042, ¶ 15 (“[T]he Act established new procedural and substantive restrictions on malpractice liability.” (internal quotation marks omitted)); *Wilschinsky*, 1989-NMSC-047, ¶ 21 (stating that the MMA was enacted to address a perceived medical malpractice crisis in New Mexico by “providing a framework for tort liability with which the insurance industry could operate[.]” one that “restrict[s] and limit[s] the] plaintiffs’ rights under the common law” through “several procedural measures and by establishing a limitation on full recovery for malpractice injury”); see also *Salopek v. Friedman*, 2013-NMCA-087, ¶¶ 50-58, 308 P.3d 139 (discussing some differences between medical malpractice claims under the MMA and under the common law). It is also at odds with the conclusion of *Duarte-Afara*, reached “in part, so as to carry out the policy goals the Legislature intended by enacting the

MMA” that an indemnification claim is subject to the MMA’s restrictions and limitations, notwithstanding its “separate and distinct” identity under the common law. 2011-NMCA-112, ¶¶ 16, 18. Such an interpretation seems especially unwarranted given that medical malpractice cases to which the MMA does not apply will be litigated under the common law.

{54} The dissent’s comments that “the approach taken by our Court today appears to stand alone” and “no published opinions . . . forbid such assignment,” Dissent Op. ¶ 69, carry no significance. Our task is to interpret the MMA, and not one of the cases cited as supporting the conclusion reached in the dissent (none of which were cited by Leger) involves the MMA or even another state’s statute with the same language and goals. As for the policy considerations discussed in the dissent’s cited cases, Dissent Op. ¶ 69, the policies relevant here are the policies the Legislature intended to implement and serve in enacting the MMA. *Safeway, Inc. v. Rooter 2000 Plumbing & Drain SSS*, 2016-NMSC-009, ¶ 38, 368 P.3d 389; *Torres v. State*, 1995-NMSC-025, ¶ 10, 119 N.M. 609, 894 P.2d 386 (“[I]t is the particular domain of the [L]egislature, as the voice of the people, to make public policy.”). The dissent offers no reason why the policies discussed in the cases cited—favoring “free alienability of property interests,” settlement, and windfalls benefitting plaintiffs—should control the MMA’s interpretation. See Dissent Op. ¶ 68. There is also no reason to presume that the Legislature intended the MMA to serve the policies invoked in the dissent regardless of potential consequences. For example, would an interpretation of the MMA based on a policy of “free alienability of property interests” allow Leger to re-assign the indemnification claim he obtained from PHS based on the reasoning that, having undergone a process of transmutation in the manner effected in this case, the claim is not a “patient’s claim”? Could that re-assigned claim be litigated many years beyond the MMA’s statute of repose based on the reasoning that PHS complied with the MMA’s presentation requirements before asserting the indemnification claim in court? Or would re-assignment be barred because the holder of the claim at the moment of re-assignment was a “natural person”?

{55} Again, we do not suggest that the opinion’s interpretation of the Legislature’s intent in enacting Section 41-5-12 is free from doubt—it cannot be, given that the

plain text does not unambiguously answer the question. *Cummings*, 1996-NMSC-035, ¶ 45 (“It is rare, if not impossible, for any language—statutory or otherwise—to be utterly free from ambiguity.”). We believe, however, that our reading of this provision in the context of the MMA as a whole best comports with the principles of statutory construction stated and applied in prior precedents, most especially in those precedents interpreting the MMA in other contexts.

Conclusion

{56} We reverse the district court’s denial of Appellants’ motion to dismiss at issue in this appeal (motion to dismiss filed by Appellants on grounds that indemnity claim is not assignable and that claim is barred by the statute of repose) and remand with instructions that Leger’s indemnification action be dismissed with prejudice.

{57} **IT IS SO ORDERED.**

LINDA M. VANZI, Chief Judge

I CONCUR:

HENRY M. BOHNHOFF, Judge

JENNIFER L. ATTREP, Judge

(dissenting).

ATTREP, Judge (dissenting).

{58} Because I believe we can and should give effect to the Legislature’s choice of the words “patient’s claim” in Section 41-5-12, I conclude that the assignment of the equitable indemnification claim⁴ to Leger is not barred by the MMA. The majority having concluded to the contrary, I respectfully dissent.

{59} The issue here is whether the Legislature intended to differentiate between “malpractice claims” and “patient’s claims” in the MMA such that the use of the latter term in Section 41-5-12 (the non-assignability provision) was meant to restrict the assignability of only certain types of malpractice claims—namely, “patient’s claims.” Asserting ambiguity in the Act, the majority relies heavily on general principles derived from *Wilschinsky*, *Duarte-Afara*, and *Baker* in determining equivalence between “patient’s claim” and “malpractice claim” and in determining that, notwithstanding language to the contrary, the Legislature meant for the non-assignability provision to apply to *all* malpractice claims. Majority Op. ¶¶ 26-32, 39-40. I think it crucial to closely examine the words in the Act before depending

on broad generalizations derived from the judiciary’s added gloss in construing the MMA. This best ensures that we “interpret the language of a statute as the [L]egislature understood it at the time it was enacted.” *Lewis*, 1996-NMCA-019, ¶ 13. In doing so, I conclude the words selected by the Legislature require a different result than the majority. And it is incumbent upon this Court to give such words effect, as they are the “primary indicator of legislative intent[.]” if doing so does not result in “injustice, absurdity or contradiction[.]” *Baker*, 2013-NMSC-043, ¶ 11 (internal quotation marks and citation omitted); *see id.* ¶¶ 1, 13 (undertaking fulsome textual analysis and disagreeing with this Court’s conclusion that the text of the MMA literally excluded certain entities from the definition of “health care provider”).

{60} Turning to the statutory language in the Act, the non-assignability provision provides: “A patient’s claim for compensation under the [MMA] is not assignable.” Section 41-5-12. “Patient’s claim” or “patient’s claim for compensation” is not a defined term in the MMA, but “patient” is defined as “a natural person who received or should have received health care from a licensed health care provider, under a contract, express or implied[.]” Section 41-5-3(E). To determine the meaning of “patient’s claim,” I look to the ordinary meaning of the word “claim.” *See State v. Ogden*, 1994-NMSC-029, ¶ 24, 118 N.M. 234, 880 P.2d 845 (“The words of a statute, including terms not statutorily defined, should be given their ordinary meaning absent clear and express legislative intention to the contrary.”). A “claim” is “an interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; cause of action.” *Black’s Law Dictionary* 302 (10th ed. 2014). Thus, a “patient’s claim” is a natural person’s cause of action under the MMA, arising from the health care that person received or should have received from a health care provider.

{61} Turning next to the definition of “malpractice claim,” the majority’s equivalence argument breaks down. Under the MMA, “‘malpractice claim’ includes any cause of action arising in

this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care which proximately results in injury to the patient, whether the patient’s claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death[.]” Section 41-5-3(C) (emphasis added). The use of the words “includes” and “any” at the beginning of the definition indicates that “malpractice claim” is wide sweeping, encompassing *all* causes of action against a health care provider based on acts of malpractice that proximately result in injury to the patient. *Cf. State v. Strauch*, 2015-NMSC-009, ¶ 37, 345 P.3d 317 (noting that “the word ‘includes’ implies an incomplete listing” (internal quotation marks and citation omitted)); *Mueller v. Sample*, 2004-NMCA-075, ¶ 16, 135 N.M. 748, 93 P.3d 769 (reading “any cause of action or suit” to include claims filed both by the plaintiff and the defendant even though contractual term referred only to the defendant); *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/any> (last visited on Oct. 28, 2018) (defining “any” to mean, among other things, “one, some, or all indiscriminately of whatever quantity . . . all”). The reference to “patient’s claim” within the definition of “malpractice claim” does not, in my opinion, render the terms equivalent. Reading the definition in this way would render many of its words superfluous. *See Baker*, 2013-NMSC-043, ¶ 24 (“[T]he Legislature is presumed not to have used any surplus words in a statute; each word is to be given meaning[.]” and we “must interpret a statute so as to avoid rendering the Legislature’s language superfluous.” (alteration, internal quotation marks, and citation omitted)).

{62} Appellants’ related assertion at oral argument that it was “inconceivable” that the Legislature had anything other than “patient’s claims” in mind when the MMA was enacted is not only contrary to the language in the Act, but also is contrary to the legal reality in which the MMA was adopted. *See State ex rel. King v. B & B Inv. Grp.*, 2014-NMSC-024, ¶ 38, 329 P.3d 658 (stating that the appellate courts operate “under the presumption that the

⁴As noted at oral argument and reflected in the second amended third-party complaint for indemnification or contribution, the claim at issue on appeal may actually be a contribution claim, not an indemnity claim. Because this distinction does not affect my analysis and because the parties in their briefing and the majority in its opinion refer to Leger’s claim as an indemnification claim, I do the same.

[L]egislature acted with full knowledge of relevant statutory and common law and did not intend to enact a law inconsistent with existing law” (alterations, internal quotation marks, and citation omitted)). Around the time the MMA was enacted, indemnity and contribution claims certainly were litigated in the medical malpractice context. See Uniform Contribution Among Tortfeasors Act, NMSA 1978, §§ 41-3-1 to -8 (1947, as amended through 1987); *Dessauer v. Mem'l Gen. Hosp.*, 1981-NMCA-051, ¶ 1, 96 N.M. 92, 628 P.2d 337 (contribution/indemnity suit brought by hospital and nurse against doctor); *Goffe v. Pharmaseal Labs., Inc.*, 1976-NMCA-123, ¶ 14, 90 N.M. 764, 568 P.2d 600 (mentioning cross-claim against doctor and hospital), *aff'd in part, rev'd in part*, 1977-NMSC-071, 90 N.M. 753, 568 P.2d 589. In simple terms, such claims involve causes of action between or among health care providers based on acts of malpractice that resulted in injury to a patient—that is, they are “malpractice claims” within the meaning of the MMA.⁵ See *Dessauer*, 1981-NMCA-051, ¶¶ 26-29 (stating that in order to hold doctor liable for contribution, doctor must be determined negligent and to hold doctor liable for indemnity, doctor must be vicariously liable for nurse's negligence); see also *Caglioti v. Dist. Hosp. Partners, Lp*, 933 A.2d 800, 816 (D.C. 2007) (equating equitable indemnity claim to malpractice claim and providing that, to recover, indemnitee “would have the burden of proving the applicable standard of care, a deviation from that standard and a causal relationship between the deviation and the injury”); *Faden v. Robbins*, 450 N.Y.S.2d 238, 239 (N.Y. App. Div. 1982) (“To be entitled to contribution from the third-party defendants, [the doctor] will have to establish that what the third-party defendants did or failed to do in their treatment of [the] plaintiff constituted a departure from the applicable standards of medical skill and care.” (alteration, internal quotation marks, and citation omitted)).

{63} And perhaps it too simple a point to make, but the Legislature clearly was capable of using the term “malpractice claim” in the MMA when it chose to do so. Other than defining “malpractice claim,” the Legislature used that term sixteen times in the MMA. See §§ 41-5-3(C), -4,

-5(C), -6(C), -7(A), -8, -14(A), -17(H), -21, -22, -23, 25(A). Had the Legislature intended that all malpractice claims be non-assignable, it could have used the term “malpractice claim” in Section 41-5-12. See *State v. Greenwood*, 2012-NMCA-017, ¶ 38, 271 P.3d 753 (“The Legislature knows how to include language in a statute if it so desires.” (alteration, internal quotation marks, and citation omitted)). It did not. Given that the language of the MMA supports a distinction between “patient's claims” and “malpractice claims,” I think we ought to give effect to the Legislature's choice of words—namely, that the non-assignability provision applies to “patient's claims” and not to *all* “malpractice claims” as the majority concludes.

{64} Giving effect to the specific language in the non-assignability provision is not inconsistent with the legislative intent behind the MMA, nor would it lead to an absurd or unreasonable result. *State v. Marshall*, 2004-NMCA-104, ¶ 7, 136 N.M. 240, 96 P.3d 801 (“In construing the statute, our primary goal is to give effect to the intent of the Legislature. We do this by giving effect to the plain meaning of the words of statute, unless this leads to an absurd or unreasonable result.” (citation omitted)). The stated purpose of the MMA is “to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health care providers in New Mexico.” Section 41-5-2. The majority posits that it “can discern no reason why the Legislature would intend to subject indemnification claims to every MMA restriction except one”—the non-assignability provision. Majority Op. ¶ 40. In making this contention, the majority assumes that the non-assignability provision is a benefit that inures to health care providers. Unlike the other “restrictions” in the MMA—such as the damages cap, Section 41-5-6, and statute of repose, Section 41-5-13—the non-assignability provision has not been identified by our courts as a benefit to health care providers. See *Baker*, 2013-NMSC-043, ¶ 18 (listing benefits in the Act to health care providers). And, indeed, this provision seems designed not to benefit health care providers but to *protect* patients. See *Quality Chiropractic, PC v. Farmers Ins. Co. of Ariz.*, 2002-NMCA-080, ¶ 10, 132 N.M. 518, 51

P.3d 1172 (“The main concern . . . was that assignment of personal injury claims would lead to unscrupulous trafficking in litigation as a commodity.”); see also *Kimball Int'l, Inc. v. Northfield Metal Prods.*, 760 A.2d 794, 803 (N.J. Super. Ct. App. Div. 2000) (“The prohibition against the assignment of tort claims is designed to protect the interests of injured persons, not alleged tortfeasors who may have claims against other alleged tortfeasors.”). As such, I think it a false premise that the non-assignability provision is a restriction—or benefit to health care providers—that should apply equally to all malpractice claims.

{65} Appellants' legislative intent argument also is unavailing. While Appellants speculate that permitting the assignment of indemnity claims runs contrary to the legislative intent of the MMA because assignment will make it more likely for these claims to be litigated and, thereby, drive up the costs of insuring health care providers, the opposite may also be true. It seems just as likely that the overall effect of limiting the assignability of indemnity claims may make settlements more difficult to obtain—resulting in lengthier and more expensive litigation, thereby driving up the costs of insuring health care providers. See *Bush v. Super. Ct. of Sacramento Cty.*, 13 Cal. Rptr. 2d 382, 389 (Cal. Ct. App. 1992) (“Sanctioning the assignment of [equitable indemnification] chose in action to the tort plaintiff fosters settlement with the tortfeasor most willing to settle.”); *Caglioti*, 933 A.2d at 816 (“Although in this instance the assignment of the equitable indemnity claim perhaps has prolonged the litigation, in other instances the assignment could provide an additional means of settling the underlying case.”); *Rubenstein v. Royal Ins. Co. of Am.*, 696 N.E.2d 973, 975 (Mass. App. Ct. 1998) (“[A]n assignment of the right of contribution encourages settlement.”); cf. *Gonzales v. Atnip*, 1984-NMCA-128, ¶ 1, 102 N.M. 194, 692 P.2d 1343 (“The historical and current public policy of this state is to favor the settlement of disputed claims, including . . . the settlement of lawsuits.” (citation omitted)). Frankly, this fiscal impact analysis is beyond the expertise of the judiciary and should be left for the Legislature to examine and make appropriate changes to the MMA if need be. See *Lewis*,

⁵Our holding in *Duarte-Afara* made it clear that equitable indemnification claims fall under the ambit of the MMA and are “malpractice claims.” 2011-NMCA-112, ¶ 15. This conclusion was reached, in part, by resort to *Wilschinsky. Duarte-Afara*, 2011-NMCA-112, ¶ 15. While I believe it was unnecessary for our Court to go much beyond the statutory language of the MMA in reaching this conclusion, the outcome of *Duarte-Afara* is sound. Our decision in *Duarte-Afara* does not however, as Appellants imply, mean that the Legislature could not have had in mind such claims when drafting the MMA.

1996-NMCA-019, ¶ 16 (leaving for the Legislature to address “potential problems created by our statutory interpretation” of clear and unambiguous provision).

{66} There also is no inherent absurdity in the Legislature prohibiting assignments of “patient’s claims” with no corresponding prohibition against the indemnity claim at issue in this case. Section 41-5-12 was in line with the common law when the MMA was enacted. *Cf. San Juan Agric. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, ¶ 20, 150 N.M. 64, 257 P.3d 884 (“When [the courts] interpret statutes, we do so against a background of common-law principles.”). At the time of enactment, it was long established that, as a general principle, “choses in action are assignable,” the pertinent exception being personal injury claims. *Parker v. Beasley*, 1936-NMSC-004, ¶ 10, 40 N.M. 68, 54 P.2d 687; *see Quality Chiropractic*, 2002-NMCA-080, ¶ 8 (stating that “[p]ersonal injury claims . . . remained unassignable” even when assignment of other claims was permitted over time); 6A C.J.S. Assignments § 42 (2016) (“[A] chose in action, whether arising in tort or contract, is generally assignable, since a chose in action constitutes personal property.” (footnote omitted)); *see also Emp’rs Fire Ins. Co. v. Welch*, 1967-NMSC-248, ¶ 5, 78 N.M. 494, 433 P.2d 79 (mentioning assignment of an indemnity claim). Under these principles, a patient’s claim, which is a personal injury claim, would not be assignable, but an indemnity claim, which remains distinct from the underlying tort, would be assignable. *See Duarte-Afara*, 2011-NMCA-112, ¶ 18. The MMA as written maintains this common law distinction. *See San Juan Agric. Water Users Ass’n*, 2011-NMSC-011, ¶ 20 (“We presume that the Legislature enacts statutes that are consistent with the common law and that the common law applies unless it is clearly abrogated.”).

{67} To support its construction of the Act, the majority relies on an “unreasonable classification”—i.e., that if Section 41-5-12 is applied only to “patient’s claims,” then *Wilschinsky*-type claims (which are personal injury claims) would be assignable while patient’s claims would not. Majority Op. ¶¶ 39-40. But the Legislature doubtless did not have *Wilschinsky*-type claims in mind when it enacted Section 41-5-12 in 1976 because these claims were not recognized by our Supreme Court until 1989. *See Wilschinsky*, 1989-NMSC-047, ¶¶ 5-17. The assignment of such personal injury claims would be barred at common law, and there is no countervailing legislative intent in Section 41-5-12 to abrogate this principle. *See San Juan Agric. Water Users Ass’n*, 2011-NMSC-011, ¶ 20 (“A statute will be interpreted as supplanting the common law only if there is an explicit indication that the [L]egislature so intended.” (internal quotation marks and citation omitted)). Regardless, the majority’s “unreasonable classification,” having been created by the judiciary, seems like a thin reed upon which to lean in effectuating the legislative intent behind Section 41-5-12. *Cf. Lewis*, 1996-NMCA-019, ¶ 13 (“We must interpret the language of a statute as the [L]egislature understood it at the time it was enacted.”).

{68} It is worth highlighting that the majority opinion entirely eliminates the right to assign any and all malpractice claims falling within the MMA. Before brushing aside the free alienability of property interests, I think we ought to require a clearer expression of legislative intent than what we have here. *See San Juan Agric. Water Users Ass’n*, 2011-NMSC-011, ¶ 20; 2B Singer, *supra*, § 50:1, at 149-51 (“Absent an indication that a legislature intends a statute to supplant common law, courts should not give it that effect.”); *see also State ex rel. Bingaman v. Valley Sav. & Loan Ass’n*, 1981-NMSC-108, ¶ 13, 97 N.M. 8, 636 P.2d 279 (“At common law,

restraints on alienation were prohibited.”); *cf. Espinosa v. United of Omaha Life Ins. Co.*, 2006-NMCA-075, ¶ 27, 139 N.M. 691, 137 P.3d 631 (noting that “anti-assignment clauses are generally disfavored”).

{69} Finally, the approach taken by our Court today appears to stand alone. Of the few courts that have specifically examined the assignability of indemnity and contribution claims to the original plaintiff in the medical malpractice context, I have found no published opinions that forbid such assignment. *See, e.g., Bush*, 13 Cal. Rptr. 2d at 384-90 (permitting assignment of indemnity or contribution claims against medical providers to original plaintiff, noting strong preference for assignability, and rejecting double recovery arguments); *Caglioti*, 933 A.2d at 807-17 (same); *Robarts v. Diaco*, 581 So. 2d 911, 915 (Fla. Dist. Ct. App. 1991) (same); *cf. Kimball Int’l*, 760 A.2d at 803 (permitting assignment of indemnification claim to the plaintiff in products liability case). These courts address similar concerns raised by the majority regarding the potential for manipulation of claims by a plaintiff in order to obtain double recovery. The courts conclude that the possibility of a recovery in excess of tort damages does not bar assignment of an indemnification claim because, as a matter of policy, a windfall, if any, should benefit the injured plaintiff rather than a tortfeasor. *See Bush*, 13 Cal. Rptr. 2d at 390; *Caglioti*, 933 A.2d at 814-15; *Robarts*, 581 So. 2d at 915. These policy considerations counsel in favor of permitting the assignment in this case, particularly in light of the fact that, because the amount of Plaintiffs’ damages and the settlement amount are not of record, it is unclear that Plaintiffs will obtain full recovery if the assignment of the indemnity claim is disallowed.

{70} For the foregoing reasons, I would affirm the district court’s denial of Appellants’ motion to dismiss.⁶

JENNIFER L. ATTREP, Judge

⁶I have limited my analysis to the issue addressed by the majority opinion and do not address the additional arguments raised by the Appellants, including the assignability of the indemnity claim under the common law and Leger’s compliance with Sections 41-5-13 and -15.

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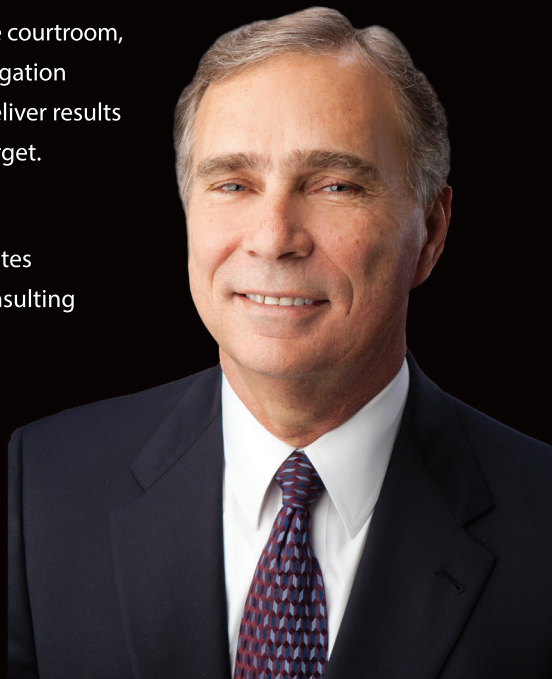
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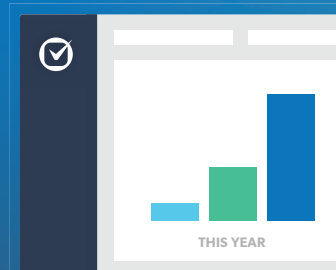
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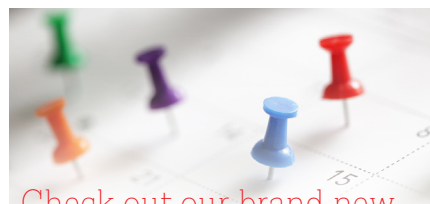
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The United States Court of Appeals for the Tenth Circuit is accepting applications from all qualified persons for the position of Federal Public Defender for the District of New Mexico. The term of office is four years, with potential for successive appointments. The current authorized annual salary is \$166,500. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. The current Federal Public Defender plans to retire on September 13, 2020 creating a vacancy for the position. The position is located in Albuquerque, New Mexico. For more information on how to apply, go to our website at www.ca10.uscourts.gov and select "Employment" in the "About the Court" menu. The deadline for applications is Monday, January 6, 2020. The Federal Judiciary is an Equal Opportunity Employer.

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The Eleventh Judicial District Court is accepting applications for a full-time, At-Will Child Support and Domestic Relations Hearing Officer. This position is under the supervision of the presiding Chief District Court Judge. Successful candidate will be assigned caseloads to include child support matters, domestic violence and domestic relations, consistent with Rule 1-053.2. Qualifications: Juris Doctorate from an accredited law school, New Mexico licensed attorney in good standing. Minimum of (5) five years of experience in the practice of law, with at least 20% of practice having been in family law or domestic relations matters. Ability to: establish effective working relationships with judges, the legal community, and staff; and to communicate complex rules clearly and concisely, respond with tact and courtesy both orally and in writing. Extensive knowledge of: New Mexico and federal case law, constitution and statutes; court rules, policies and procedures; manual and computer legal research and analysis. Must be able to demonstrate a work record of dependability and reliability, attention to detail, accuracy, confidentiality, and effective organizational skills. A post-offer background check will be conducted. SALARY: \$51.44 hourly, plus a full benefits package. Wages are set by the Supreme Court and are not negotiable. Please send an application with your resume, and proof of education to the Eleventh Judicial District Court, Human Resources Office, 103 S. Oliver Drive, Aztec, NM 87410, or email to 11thjdchr@nmcourts.gov, or fax to 505-334-7762. A complete application can be found on the Judicial Branch web page at www.nmcourts.gov. Resumes will not be accepted in lieu of application. Incomplete applications, without all required documentation will not be considered. CLOSES: Friday, November 15, 2019; 5:00 p.m.

Associate Attorney

Holt Mynatt Martínez P.C., an AV-rated law firm in Las Cruces, New Mexico is seeking associate attorneys with 0-5 years of experience to join our team. Duties would include providing legal analysis and advice, preparing court pleadings and filings, performing legal research, conducting pretrial discovery, preparing for and attending administrative and judicial hearings, civil jury trials and appeals. The firm's practice areas include insurance defense, civil rights defense, commercial litigation, real property, contracts, and governmental law. Successful candidates will have strong organizational and writing skills, exceptional communication skills, and the ability to interact and develop collaborative relationships. Salary commensurate with experience, and benefits. Please send your cover letter, resume, law school transcript, writing sample, and references to rd@hmm-law.com.

New Mexico Public Education Department's Special Education Bureau – Attorney Supervisor and Attorney Advanced

The New Mexico Public Education Department is seeking attorneys for its Special Education Bureau. The openings include an Attorney Supervisor position, and a Lawyer Advanced position. More details about the positions and how to apply are available at <http://www.spo.state.nm.us/>. Please check the website periodically for updates to the list of available positions.

Personal Injury Associate

Caruso Law Offices, an ABQ plaintiff personal injury/wrongful death law firm has an immediate opening for associate with 3+ yrs. litigation experience, including arbitration, bench and jury trial. Must have excellent communication, organizational, and client services skills. Good pay, benefits and profit sharing. Send confidential response to Mark Caruso, mark@carusolaw.com or 4302 Carlisle NE, ABQ NM 87107 or fax 505-883-5012. See our website at www.carusolaw.com

Assistant Director of Admissions

The University of New Mexico School of Law seeks an energetic, outgoing Assistant Director of Admissions/Student Recruitment Specialist to support the Law School's enrollment and recruitment efforts. Duties include: developing/delivering outreach programs/presentations, arranging visits/tours, providing law/attorney career and academic advising to prospective students, organizing large events, preparing reports, creating/distributing recruitment materials, visiting schools/colleges, analyzing trends in recruitment programs and effectiveness, and coordinating participation of constituencies at national and local recruitment events. Preferred Qualifications: Knowledge of and experience in law school or graduate school admissions processes; Familiarity with databases Banner and ACES2; Strong writing and speaking skills; JD degree strongly preferred. Apply: <https://unmjobs.unm.edu/>

Litigation Paralegal

Small, friendly, plaintiffs' personal injury firm, Barber & Borg, LLC, seeks experienced litigation paralegal. Applicant must be able to handle all parts of case management from beginning through trial. Some travel may be required. Good communication, computer and organizational skills required. Strongly prefer candidate with 2+ years of legal experience. We offer a pleasant work environment in central Albuquerque and excellent salary opportunity for qualified applicant. Non-smokers preferred. Send resume to: nathan@barberborg.com.

Legal Assistant - Paralegal

Must have extensive litigation experience. Discovery, Personal Injury experience - We are a Small 2 Attorney Practice - Personal Injury & Insurance Defense. Medical record/bill request function is KEY role; Seeking experience with Microsoft Office; case and client management, scheduling and billing using phone, and email. Contracted hourly rate is negotiable depending on experience. Please call David at 505.264-9011. All inquiries are completely confidential. Please FIRST send resume and salary requirements to DavidRosales@NewMexicoCounsel.com

Legal Secretary

AV rated insurance defense firm seeks full-time legal assistant with five plus years' experience in insurance defense and civil litigation. Position requires a team player with strong word processing and organizational skills. Proficiency with Word, knowledge of court systems and superior clerical skills are required. Should be skilled, attentive to detail and accurate with a Minimum typing speed of 75 wpm. Excellent work environment, salary and benefits. Please submit resume to mvelasquez@rsk-law.com or mail to 3880 Osuna Rd. NE, Albuquerque, NM 87109

Paralegal

Litigation paralegal with minimum 3-5 years' experience. Candidates should possess excellent writing and research skills with the ability to support all aspects of litigation from discovery through trial. Competitive salary and benefits. Please send your resume to michele@hinklelawoffices.com.

Legal Assistant/Secretary

Medium sized downtown litigation firm is accepting resumes for a full-time legal assistant position. We are seeking a motivated, team-orientated person with experience with civil litigation, court rules and filing procedures. Candidates must have solid clerical, organizational, computer and word processing skills. Excellent benefits. Salary will be based on experience and skills. Please email resumes and references to jobs@conklinfirm.com.

Paralegal

Litigation Paralegal with minimum of 3- 5 years' experience, including current working knowledge of State and Federal District Court rules, online research, trial preparation, document control management, and familiar with use of electronic databases and related legal-use software technology. Seeking skilled, organized, and detail-oriented professional for established commercial civil litigation firm. Email resumes to e_info@abrfirm.com or Fax to 505-764-8374.

Office Space

Prime Office Space— Centrally Located

Professional office space to lease. Convenient for clients and to Courthouse. Lots of natural light and windows. Private office, secretarial and reception areas. Reserved, covered parking. Conference Room. Private bathroom. Kitchen. Storage. Approximately 1,000 square feet. Available immediately. Summit Building. Contact Jennifer at 505-880-1211.

1212 Pennsylvania St NE

Uptown Attorney Office in single story office building shared by sole practitioners and small law firm with centrally staffed reception area, two conference rooms, law library, and kitchen. Office has large windows with natural light, security system, ample parking and access to freeway. \$750 month. Phone, internet, copier, postage, and secretarial bays available for additional fee. Call 266-8787 or email manager@ABQLawNM.com.

Office Space for Lease – Downtown

Beautiful space to sub-lease with lots of natural light, cork floors, free tenant parking, enclosed patio space, front door security, shared kitchenette, conference rooms and lobby. Four-to-six offices plus common area available approximating 2,500-3000 square feet. Available January 1, 2020 for 3-5 year term. Rent is slightly below downtown market rate of \$17.00 per square foot; includes utilities. Walking distance to Courthouses, government buildings and downtown restaurants. Access to basement storage. Please contact: sublease2019@outlook.com

DIAL 222-2222 !!!

222-2222 phone number is now available in Albuquerque! Fantastic opportunity to identify, brand and grow your practice. Long term lease available and affordable. Contact rwr2d2@aol.com for immediate details.

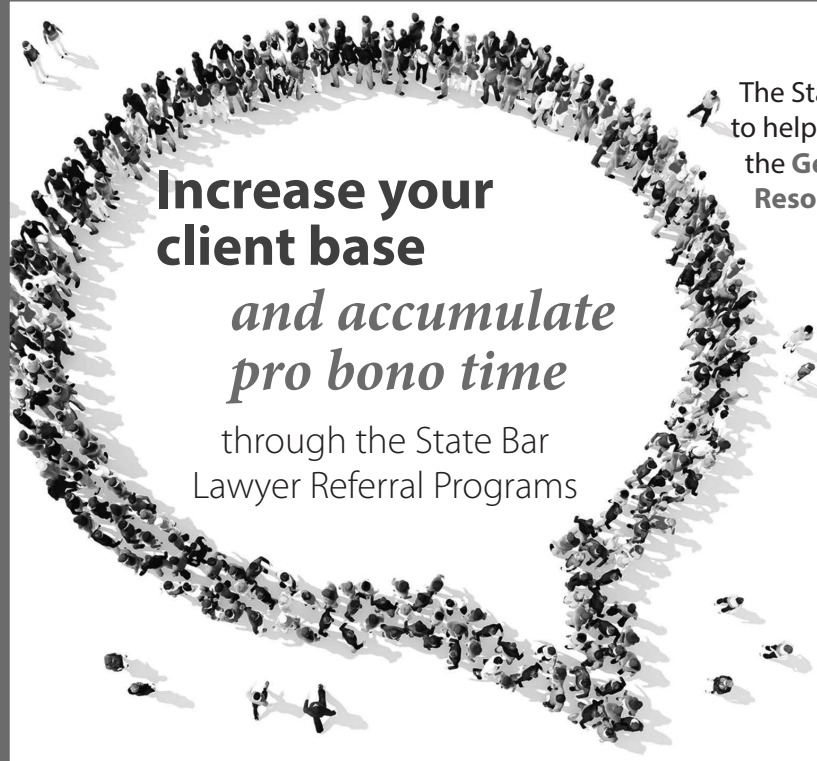
Search For Will

Max G. Fernandez, age 92 and resident of Albuquerque, NM, passed March 23, 2019. Peggy (Montoya) Fernandez, age 61 and resident of Albuquerque, NM, passed July 31, 2018. Please contact Crystal Ortega at 505-720-5280

Miscellaneous

Want To Purchase

Want to purchase minerals and other oil/gas interests. Send details to: P.O. Box 13557, Denver, CO 80201



**Increase your
client base**
*and accumulate
pro bono time*

through the State Bar
Lawyer Referral Programs

The State Bar has two lawyer referral programs to help members connect with potential clients: the **General Referral Program** and the **Legal Resources for the Elderly Program (LREP)**.

- **General Referral Program** panel attorneys agree to provide referral clients with a free, 30-minute consultation. Any services rendered after the initial 30 minutes are billed at the attorney's regular hourly rate. The General Referral Program receives more than 10,000 calls per year.
- **LREP** is a free legal helpline and referral service for New Mexico residents age 55 and older. LREP referrals to panel attorneys are only made after a staff attorney has screened the case and determined that it is appropriate for referral. LREP referrals are made on full-fee, reduced fee and pro bono basis. LREP processes approximately 5,000 cases each year.



Contact Maria Tanner at mtanner@nmbar.org or 505-797-6047 for more information or to sign up with the programs.



2020 Call *for* CLE PROPOSALS

The Center for Legal Education is a major component of the New Mexico State Bar Foundation. CLE is a non-profit New Mexico accredited course provider dedicated to providing high quality, affordable educational programs to the legal community hosting both local experts and national speakers.

CLE is accepting proposals for 2020 programs which include programs to be held at the Bar Center, via webinar and at the State Bar Annual Meeting. While all legal topics will be accepted, the following are priority for 2020:

Hot Topics • Law Practice Management
Attorney Wellness • Government

Please complete and submit the call for proposal form, <https://www.jotform.com/build/90175355209154> by Nov. 30.

Contact cleonline@nmbar.org or 505-797-6020 with questions.



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