IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

S-1-SC-35214

KIMBERLY MONTAÑO
Plaintiff-Appellee,

v. No. 32, 403

ELDO FREEZA, M.D. and
LOVELACE INSURANCE
COMPANY, a domestic for-profit Corporation,

Defendants-Appellants.

Brief Amicus Curiae of the New Mexico Medical Society, Curry, Roosevelt and DeBaca County Medical Society, Chaves County Medical Society, Doña Ana County Medical Society, Eddy County Medical Society, Lea County Medical Society, Luna County Medical Society, Otero County Medical Society, New Mexico Hospital Association, Board of Regents of the University of New Mexico, for its public operation known as University of New Mexico Health Sciences, University of New Mexico School of Medicine and University of New Mexico Hospitals, Nor-Lea Regional Hospital District, Texas Alliance For Patient Access, Texas Medical Association, Texas Hospital Association, Texas Nurses Association, Texas Organization of Rural & Community Hospitals, Texas Osteopathic Medical Association, Texas Podiatric Medical Association, Texas College of Emergency Physicians, Texas Orthopedic Association, Lubbock Diagnostic Radiology, Lubbock-Crosby-Garza County Medical Society, El Paso Orthopaedic Surgery, El Paso County Medical Society, HCA Holdings, Texas Oncology, Tenet Healthcare, Harris County Medical Society, Dallas County Medical Society, Texas College of Emergency Physicians, American College of Emergency Physicians, American Association of Orthopaedic Surgeons and the American Medical Association

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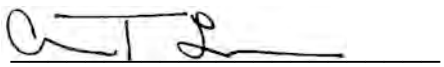
STATEMENT OF COMPLIANCE

Pursuant to Rule 12-213(A)(1)(c), Amici state that this Brief of Amicus Curiae complies with the length limitations of Rules 12-213(F) as incorporated into Rule 12-215, NMRA. The brief uses a proportionately spaced font, has a typeface of 14 points, and contains 9,265 words. The word count is obtained using Microsoft Word 2010



Alice T. Lorenz

I. Introduction of the Amici

New Mexico has a long-standing state public policy favoring maintaining increasing access to medical care to benefit its citizens. The *Montaño* (*Montaño v. Frezza)* decision, if upheld, will decrease access to care.

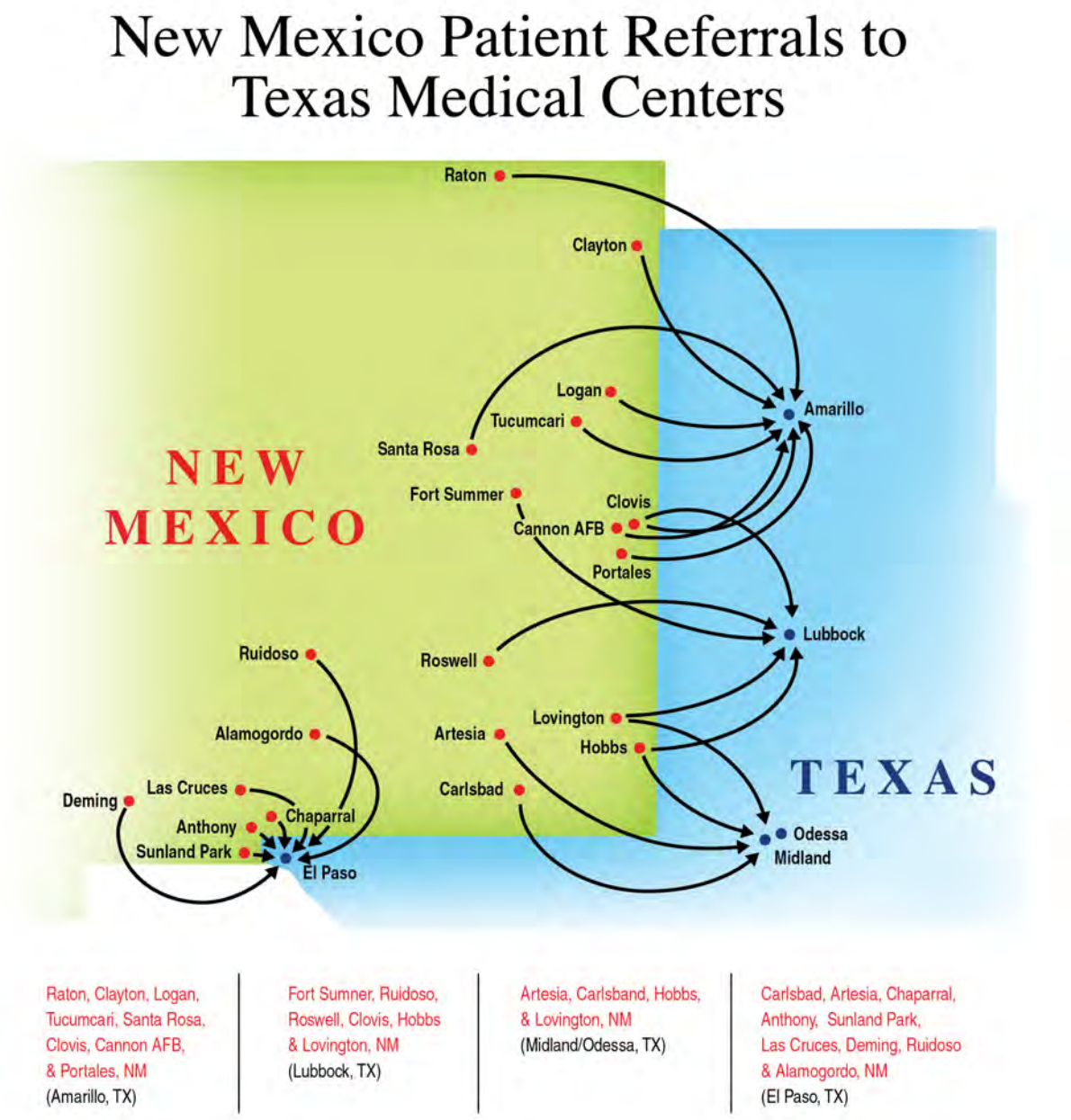
Sick and injured Eastern New Mexico patients have long relied on health care providers in Texas for care. The needed care is often not available to them within any reasonable driving distance in New Mexico. The opportunity for New Mexico providers to refer to Texas will be reduced, and in fact, already has been reduced, by *Montaño*. The willingness of Texas providers to treat New Mexico patients will be shaken if the *Montaño* ruling stands.

The *Montaño* opinion, if upheld, will have dramatic public health repercussions and will result in the unintended consequence of reducing access to medical care for the citizens of Eastern New Mexico.

The map below shows referrals of New Mexico patients to Texas Medical Centers. The exact number of patients is not quantified but can safely be stated to number in the thousands and cover all of Eastern New Mexico.[1]

Numerous Amici have joined in this brief to express their concern about the *Montaño* opinion. The Amici, including the New Mexico Medical Society, the New Mexico Hospital Association, and the Regents of the University of New

[1] No counsel for either party authored this brief in whole or in part. No party has made any monetary contribution to fund the preparation or submission of this brief.



Mexico, for its public operation known as the UNM Health Sciences Center, also include state and local health care providers, and medical and hospital associations, on both sides of the New Mexico and Texas border, all of whom are concerned with access to care. The Amici also include national organizations such as the

American Medical Association. A full statement of interest for all Amici is found at Section XIII of this brief.

New Mexico, Texas & National Amici

NEW MEXICO AMICI

1. New Mexico Hospital Association
2. Board of Regents of the University of New Mexico for its public operation known as
   - University of New Mexico Health Sciences
   - University of New Mexico School of Medicine
   - University of New Mexico Hospitals
3. New Mexico Medical Society
4. Nor-Lea Hospital District
5. Curry, Roosevelt and De Baca County Medical Society
6. Chaves County Medical Society
7. Doña Ana County Medical Society
8. Eddy County Medical Society
9. Lea County Medical Society
10. Otero County Medical Society

TEXAS AMICI

1. Texas Alliance For Patient Access
2. Texas Medical Association
3. Texas Hospital Association
4. Texas Nurses Association
5. Texas Organization of Rural & Community Hospitals
6. Texas College of Emergency Physicians
7. Texas Orthopaedic Association
8. Lubbock Diagnostic Radiology
9. Lubbock-Crosby-Garza County Medical Society
10. El Paso Orthopaedic Surgery
11. El Paso County Medical Society
12. HCA Holdings
    - Del Sol Medical Center
    - Las Palmas Medical Center
13. Texas Oncology
    - Texas Oncology, Amarillo Cancer Center
    - Texas Oncology, El Paso Cancer Center Treatment Center Gateway
    - Texas Oncology, El Paso Cancer Center Treatment Center Grandview
    - Texas Oncology, El Paso Cancer Center Treatment Center Joe Battle
14. Tenet Healthcare
    - The Hospitals of Providence Memorial Campus
    - The Hospitals of Providence Sierra
    - The Hospitals of Providence East Campus
    - The Hospitals of Providence Children's Hospital
15. Harris County Medical Society
16. Dallas County Medical Society
17. Texas Osteopathic Medical Association
18. Texas Podiatric Medical Association

NATIONAL AMICI

1. American College of Emergency Physicians
2. American Medical Association
3. American Association of Orthopaedic Surgeons

II. Introduction of the Public Policy Issue

The Amici respectfully submit that the ruling in *Montaño* will have dire consequences for Eastern New Mexico patients seeking medical care in Texas. The appellate decision favors a public policy of the "greatest remedy for a single New Mexico patient" without considering the long-standing New Mexico public policy favoring access to care.

Montaño will place Texas doctors, nurses and hospitals seeing New Mexico patients at an *even greater* litigation risk than the risk the same providers would face seeing Texas patients. Why should or would Texas health care providers agree to accept a higher litigation risk simply by agreeing to see New Mexico patients in Texas?

"Litigation risk" as the term is used here means an increase in the frequency of lawsuit filings and an increase in the size of awards and settlements. The litigation risk for New Mexico tort claims defendants (including doctors and hospitals) is higher than Texas because, among other things, the caps are higher and the statute of limitations is more lenient. Additionally, the Texas Tort Claims Act provides more protections to hospitals employees, including emergency room personnel than in New Mexico. Furthermore, the general medical practice litigation risk is greater in New Mexico than Texas, in part due to New Mexico

laws including higher caps, a lower reporting threshhold, a more lenient statute of limitations and a less protective charitable care standard.

Increased litigation risk has a cost. That cost is revealed in many ways, such as:

-increased insurance premiums;

-increasing tax rates for units of government;

-limiting the pace at which equipment is updated;

-factoring in the decision to maintain or expand levels of trauma care;

-loss of staff time;

-diversion of resources that otherwise would have been allocated to medical care; and

-the willingness of medical staff to provide care and the ability of medical staff to afford the increased costs associated with providing care.

For many Texas health care providers, the increased cost that will be required to manage this increased exposure is untenable. Consequently, Texas doctors and hospitals will be forced to reconsider their willingness to accept the transfer or referral of New Mexico patients for elective care.

The concern about increased litigation risk is amply illustrated by the many letters the Amicus have in its possession; letters the Amicus would be willing to provide at the Court's request.[2]

In a letter to the Amici, El Paso obstetrician Angel Rios, MD, notes that if *Montaño* stands, Texas physicians will be twice bitten. They will lose Texas medical liability protections and yet still remain ineligible to buy into (and receive the benefits of) the New Mexico Patient Compensation Fund. Most importantly, New Mexico patients will lose ready access to a large number of Texas medical specialists.[3]

This brief rests on these underlying premises, which the Amici accept for purposes of this submission:

- New Mexico Tort Claims Act, NMSA 1978 § 41-4-4 et seq., will provide a greater remedy than Texas Tort Claims Act,[4] and those of many other states;
- New Mexico law will, on some occasions, provide a greater remedy than a civil lawsuit governed by Texas law or by the law of other states.

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[2] Amicus directs the Court to the following web site where these letters have been posted: www.montanovfrezzabrief.info

[3] www.montanovfrezzabrief.info/angel-rios%2c-md.html

[4] Ch. 101, Tex. Civ. Prac.& Proc. Code

- The Court's decision is based only on a public policy consideration benefitting the plaintiff, without consideration of the State's public policy favoring access to care for all of its citizens.
- The ability of a New Mexico resident to seek treatment in Texas and then apply New Mexico law to resolve a dispute and will increase liability risks and costs. It will inevitably lead to increases in the frequency of civil lawsuits filed in New Mexico against Texas health care providers who provide care in Texas;
- Many Texas health care providers have indicated they cannot absorb the increased costs *Montaño* creates.
- As a consequence, the *Montaño* decision will likely diminish access to care for thousands of Eastern New Mexicans, at a time when the area is already medically underserved.
- A reduction in access to care conflicts with a goal of maintaining and expanding access to care and is contrary to New Mexico public policy.

The Amici respectfully urge this Court to apply the New Mexico comity policy in a manner that does not diminish access to care for thousands of Eastern New Mexico patients. These are patients who are referred by their New Mexico physicians or who voluntarily seek treatment in Texas.

III. *Montaño* Rests On A Single Public Policy Favoring One Person

The appellate Court held that the "bedrock question" presented by *Montaño* is whether applying Texas law (in this particular case the Texas Tort Claims Act) is contrary to New Mexico's public policies.

The Court reached the policy question only after it applied a *Sam v. Sam*, comity analysis to conclude that two factors favored applying Texas law and two factors favored applying New Mexico law. *See* 2006-NMSC-053, 139 N.M. 474, 134 P.3d 761.

The Court then proceeded to answer its question by only examining New Mexico public policy as it applied to a recovery for this plaintiff. The lower Court noted that this particular plaintiff might not have a remedy if Texas law applied. Secondly, the Court determined that Texas law was more restrictive. The New Mexico Tort Claims Act has higher limits on recovery, a broader waiver of immunity, permits suits against individuals and uses a notice provision substantially less restrictive than the corresponding Texas law. Thus, the Court's public policy analysis favored applying New Mexico's Tort Claims Act.

While the Court noted the *differences* between the laws of the two states, it provided no analysis when concluding that using Texas law would "violate" New Mexico public policy. Even assuming—without conceding—that a difference is a

violation of public policy, the Court failed to consider other relevant public policies.

Most notably, the Court's flawed analysis misses the overriding public policy—that of assuring the availability of health care to New Mexico residents. As this Court and the Court of Appeals have recognized, New Mexico's public policy includes assuring the availability of health care services to New Mexico residents. That policy is perhaps most clearly made manifest in the Medical Malpractice Act, NMSA § 41-5-1 et seq. (MMA). *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 20, 399 P.3d.1047 states that in the MMA, by "providing benefits and imposing burdens, the Legislature created a system that inspires widespread participation *to ensure that patients would have adequate access to health care services*) (emphasis added). *Moncor Trust Co. ex rel. Flynn v. Feil*, 1987–NMCA–015, ¶ 9, 105 N.M. 444, 733 P.2d 1327 had previously recognized that "[a]n obvious goal of the [L]egislature in enacting this legislation was to address certain factors adversely affecting the cost of medical malpractice insurance, *to encourage continued availability of professional medical services*, and to provide incentives for the furnishing of professional liability insurance.") (emphasis added).

Nothing in the *Montaño* Court opinion indicates that it considered the likely negative public health consequences of their decision.

IV. The Opinion Focuses Solely on Crafting a Remedy for the Appellee.[5]

The Court failed to consider the limiting effect its decision will have on access to care in New Mexico. The opinion takes a number of steps to get from a New Mexico citizen voluntarily choosing to travel to Texas to receive elective medical care (by a Texas doctor in a Texas facility) to a conclusion that New Mexico law applies. Judge Sutin, a concurring jurist in the *Montaño* case, stated that the Court employed a "legal fiction" to reach its result.

Consider the legal steps and fictions the Court had to take, observe and employ to create a remedy for the Appellee:

1. The Court concluded that the "place of the wrong" is the place where the appellee allegedly first discovered the injury and not where the injury allegedly occurred;
2. The Court held that the four *Sam* factors should be given equal weight;
3. The Court concluded that analyzing the four factors produced a 2-2 tie;
4. The Court announced that it wouldn't "break" the tie;

[5] The Amici are uniquely qualified to speak to the disastrous effects the *Montaño* ruling will have on access to care. Therefore, the Amici focus on that issue in this brief. Amici do not concede that New Mexico has personal jurisdiction over Dr. Frezza, that the Court applied the correct "place of wrong" analysis, that it applied the *Sam v. Sam,* factors correctly or that it properly refused to "break the tie." Rather, the Petitioners have addressed those issues in their briefing, an analysis which the Amici adopt where not otherwise in conflict with Amicis' own position set forth in this brief.

5. The Court reasoned that Texas law was different than New Mexico law, more restrictive than New Mexico law and a violation of New Mexico public policy;
6. The Court decided that a single public policy favors the appellee by only considering how Texas law might affect the appellee. The Court ignored the severely limiting effect the opinion will have on the availability of medical care for the more than half-million residents of Eastern New Mexico.

V. New Mexico Public Policy Favors Access to Care For All of Its Citizens

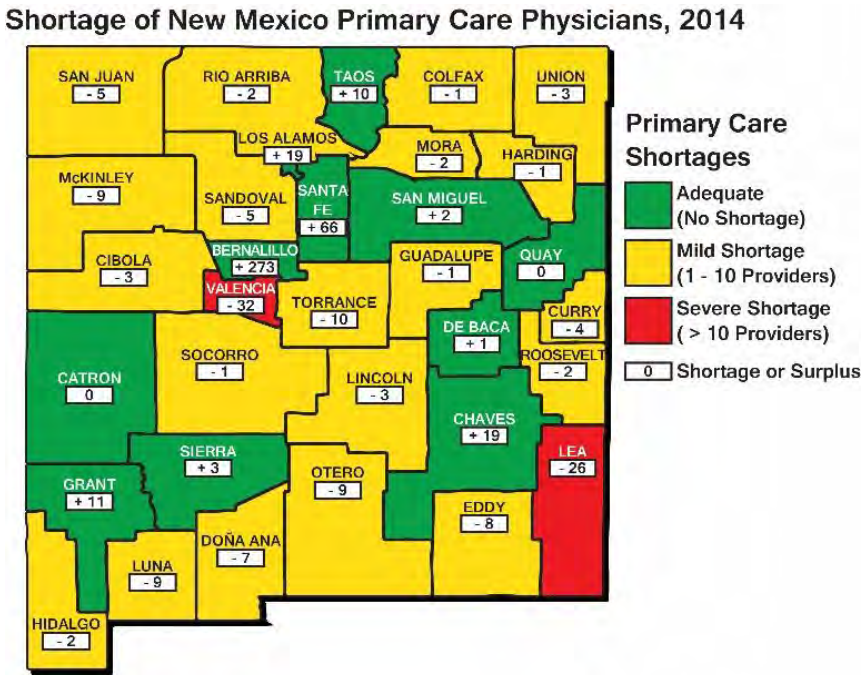
New Mexico favors promoting access to health care. The New Mexico Department of Health, in its 2014-2016 Strategic Plan, identifies access to a competent public and personal health care workforce as one of its ten essential public health services (at p. 13).

Goal 4 of the Department is to recruit and retain health care professionals, a need arising from the limited access to care currently existing in New Mexico. The New Mexico Work Force Health Care Report for 2013 notes:

"Each profession covered in this study [primary care, nursing, psychiatry and dentists] reports a deficit in the number of active practitioners—and this has consequences for patient care. As the nursing contributors point out, "Shortages create barriers to health care access. They also cause the current workforce to be more prone to stress, fatigue, errors and burnout."

The just released 2015 Annual Report by the New Mexico Health Care Workforce Committee states:

"The New Mexico Health Care Workforce Committee estimates that there are 1,908 primary care physicians (PCPs), 1,228 certified nurse practitioners and certified nurse specialists (CNPs/CNSs), 694 physician assistants (PAs), 236 obstetrics and gynecology physicians (Ob/Gyn), 162 general surgeons, 289 psychiatrists, 1,081 dentists and 1,928 pharmacists (Table 1.3). *Practice location distribution reveals significant shortages in most areas of the state.* Our analyses indicates that without redistributing the current workforce, New Mexico is below national benchmarks by 145 PCPs, 197 CNPs/CNSs, 136 PAs, 43 Ob/Gyn, 18 general surgeons, 109 psychiatrists, 73 dentists and 299 pharmacists." (emphasis added).



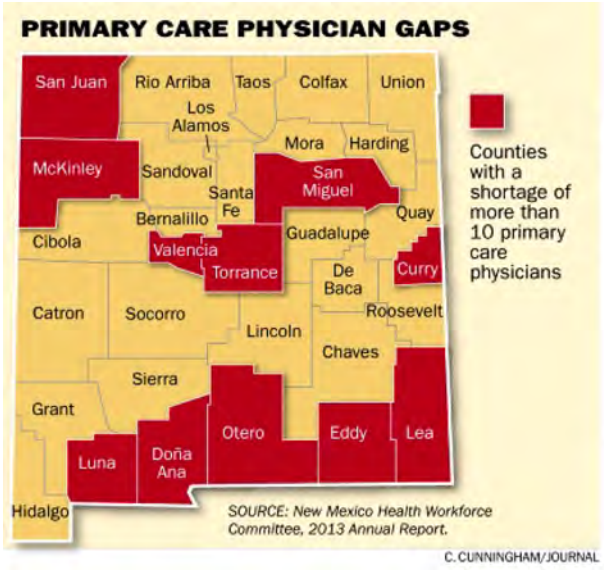
VI. New Mexico Public Policy Favors Access to Care Because Availability of Medical Care in Eastern New Mexico is Already Critically Lacking

The New Mexico Department of Health has been frank in acknowledging the limitations on access to care in New Mexico, a condition the *Montaño* decision will exacerbate. The Department notes:

"In New Mexico, only Los Alamos County does not contain a health professional shortage area. The number of registered nurses serving in New Mexico is well below the national average."

2013 Report at 33.

The shortage of primary care physicians serving in Eastern New Mexico is again demonstrated, exemplified by the map and chart below:



VII. With a Shortage of Health Care Providers, New Mexico Citizens Rely on Texas Health Care Providers

Like other states with large rural populations, New Mexico has a shortage of physicians. Many residents of New Mexico must drive to a neighboring county or further to get the health care they need. This is especially true in Eastern New Mexico where hospitals and medical specialists are in short supply. For many residents of New Mexico, Texas is the closest option for health care needs.

A large number of New Mexico patients who rely on Texas doctors and hospitals for their health care needs are referred from 13 Eastern counties[6] on or near the Texas border. These are rural, medically underserved areas of the state. More than 27% of the state's residents live in the 13 border counties. However, those counties account for only 14% of the state's supply of specialty care physicians.[7]

For example, two of the 13 counties, Lea and Otero, have been cited as having among the greatest shortage of primary care physicians in New Mexico.[8]

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[6] Chaves, Curry, De Baca, Doña Ana, Eddy, Guadalupe, Harding, Lea, Otero, Quay, Roosevelt, San Miguel, and Union counties.

[7] Pages 17 & 18, 2009 Geographic Access Data System (GADS) Report, Selected Healthcare Professionals in New Mexico, New Mexico Health Policy Commission, May, 2010.

[8] New Mexico Health Care Workforce Committee Report, October 1, 2014.

Nine of the 13 counties have a need for general surgeons.[9] There are no surgical facilities in Harding, Guadalupe and De Baca counties.[10] Four of those counties, Quay, Curry, Roosevelt and Lea, have a shortage of obstetrics/gynecology physicians.[11] All thirteen counties have a shortage of Certified Nurse Practitioners and Clinical Nurse Specialists.[12] Otero has among the greatest shortage of Certified Nurse Practitioners and Nurse Specialists in the state.[13] Doña Ana, Otero, Eddy and Lea counties have among the greatest shortage of psychiatrists in the state.[14] De Baca, Guadalupe, Harding, Quay, Roosevelt and Union counties have no cardiologist, no neurologist, no plastic surgeon, no orthopedic surgeon, no radiologists, and no ear, nose and throat doctor.[15] Of the aforementioned counties, only Roosevelt County has an oncologist.[16]

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[9] Pages 69-70, Table, New Mexico Estimated General Surgeons Practice Gap per County, 2013. New Mexico Health Care Workforce Committee Report, October 1, 2014.
[10] Page 18, New Mexico Health Care Workforce Committee Report, October 1, 2014.
[11] Page 17, New Mexico Health Care Workforce Committee Report, October 1, 2014.
[12] Map, detailing Shortage of New Mew Mexico Certified Nurse Practitioners and Clinical Nurse Specialists, Page 15, New Mexico Health Care Workforce Committee Report, October 1, 2014.
[13] *Ibid*, Page 15.
[14] Page 19, New Mexico Health Care Workforce Committee Report, October 1, 2014.
[15] American Medical Association Workforce Mapper.
[16] American Medical Association Workforce Mapper.

The opportunity for New Mexico doctors to refer patients to Texas County Hospitals is of critical importance to the people of New Mexico. The map below shows towns in Eastern New Mexico and the county hospitals in Texas to which patients are referred.

New Mexico's only Level 1 trauma center is the University of New Mexico Health Science Center in Albuquerque. The state has no Level 2 Trauma Centers. Level 1 and 2 trauma centers treat patients who are suffering from life threating medical emergencies. Such emergencies include high impact auto and motorcycle accidents, stabbings, gunshot wounds, heart attack and stroke.

More than one-third (36%) of New Mexico's critically injured trauma patients are treated in Texas.[17]

If *Montaño* is upheld, Texas hospitals may have trouble retaining trauma specialists who are required to meet the obligations of its regional trauma center.[18] The ripple effects would likely be substantial including the possible diversion of New Mexico trauma patients to Albuquerque for care.

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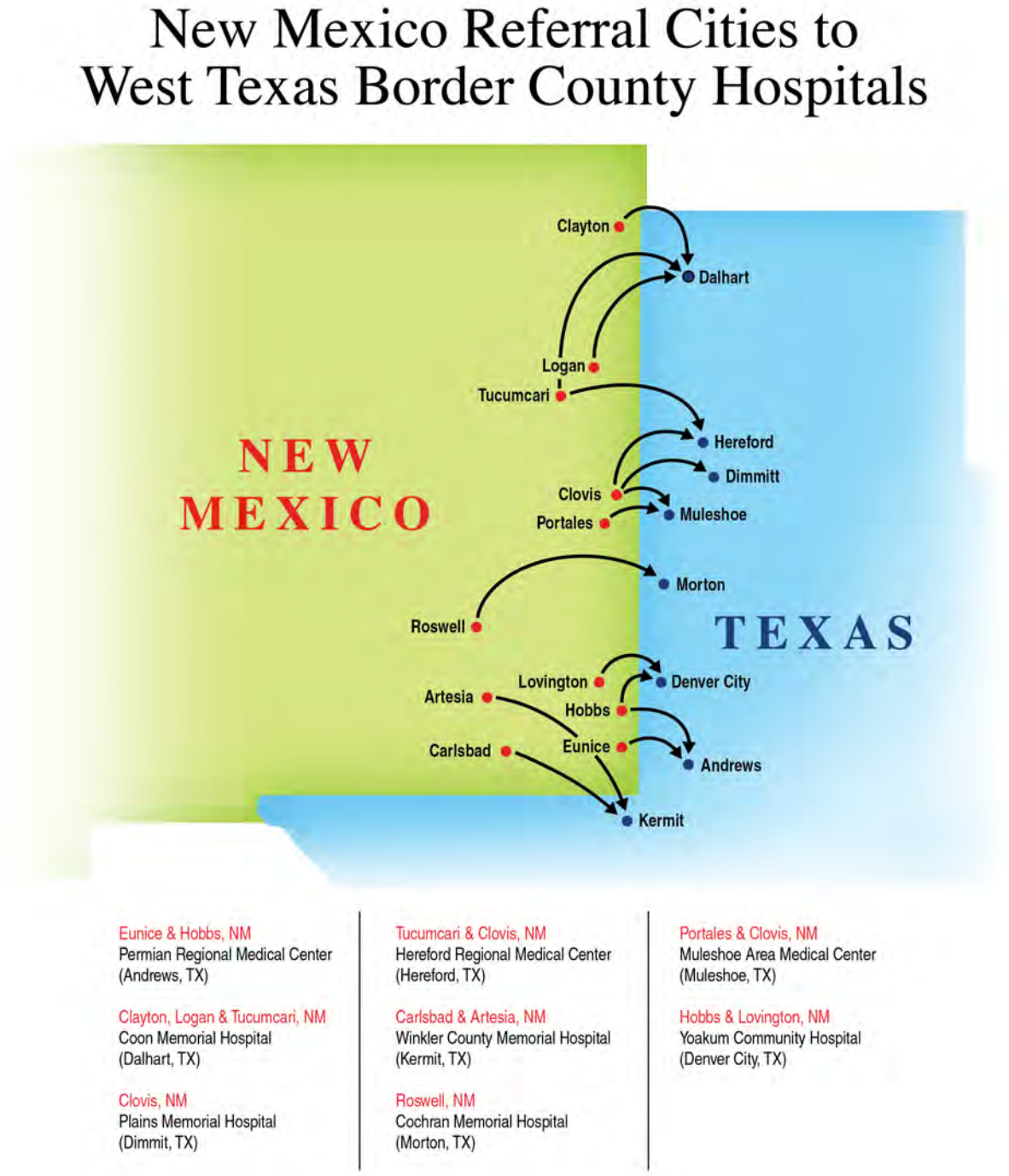
[17] See letters from UNM Hospital; (http://www.montanovfrezzabrief.info/albuquerque.html), UMC Health System-Lubbock (http://www.montanovfrezzabrief.info/lubbock.html), and University Medical Center of El Paso (http://www.montanovfrezzabrief.info/el-paso.html).

[18] http://www.montanovfrezzabrief.info/andrew-palafox,-md.html

VIII. *Montaño* Will Increase the Reluctance of Texas Not-For-Profit Hospitals to Accept Referrals from New Mexico.

Texas county hospitals accept a substantial number of referrals from New Mexico. The map shows where in Texas New Mexico residents are referred.



Texas county hospitals are already operating on a razor thin margin. If the *Montaño* ruling holds, these hospitals will face increased liability exposure that

will, based upon actuarial data, [19] likely result in increased frequency of lawsuits and increased litigation costs. These costs will have to be addressed. The county hospitals could decide to buy more liability coverage at an increased premium. They could opt to increase their reserves by raising hospital prices. County hospitals may find it prudent to impose a special tax to cover the costs of increased liability exposure. The Amici are not suggesting that all Texas county hospitals will discontinue treating all New Mexico patients who seek elective care in Texas. However, it strains credulity to think that many will not. Increased liability comes at a cost. It is the local taxpayers that will be asked to assume that cost if their county hospital elects to continue to provide care to New Mexico patients.

IX. Disregarding Texas law will have a detrimental effect on Eastern New Mexico citizens seeking access to medical care in Texas.

Patients from Eastern New Mexico are reliant on West Texas health care providers for a full range of medical care. Those patients can only receive the care if a Texas health care provider is willing to accept the risk and increased costs now associated with treating a New Mexico citizen in Texas. While the Amici are not suggesting that all Texas health care providers will discontinue non-emergent care to New Mexico citizens, the letters posted on www.montanovfrezzabrief.info

[19] Gross Consulting, "Comparison of Expected Medical MALPRACTICE Costs-NM v TX", July 27, 2015
http://www.montanovfrezzabrief.info/actuarial-data.html

illustrate that the concerns are real. Texas health care providers now must consider the following when deciding whether to accept patients from New Mexico.

- Will current insurance coverage adequately protect providers from this increased exposure?
- Will carriers raise professional liability rates for providers in Texas that treat citizens of New Mexico?
- Should providers continue to contract with New Mexico health plans?
- Should patients from New Mexico that are admitted through the Emergency Room be transferred back to New Mexico once the patient is stable?
- Will providers be able to continue providing high risk services to New Mexico patients given the substantially higher costs associated with these services?
- Will providers be able to continue to see Medicaid or other low reimbursement patients?

X. How Will Texas Providers And Others Respond to *Montaño*?

The *Montaño* Court holds that New Mexico public policy favors the choice of law decision that will give the greatest recovery to the plaintiff. If the holding is limited to its facts, then it would apply to suits filed in New Mexico by New Mexico residents against Texas state employees for care rendered in Texas. The holding applies to all units of government in Texas and their respective employees.

At a minimum, the ruling will affect University Medical Center in Lubbock and El Paso, and the doctors and nurses that work there. Additionally, it would apply to ten Texas community hospitals located near the New Mexico border, and the doctors and nurses that work at these hospitals.[20] Even if *Montaño* is read narrowly, the decision could affect those above plus an additional 24 Texas teaching hospitals, and the doctors and nurses that work there.

A broad holding in *Montaño* would apply to any medical malpractice case, even those not involving a tort claims defendant. That would mean that any Texas health care provider could be sued in New Mexico and New Mexico law would govern the suit.

Read more broadly still, the *Montaño* decision holds that if New Mexico law provides a greater remedy than the law of another state, then New Mexico comity policy mandates that New Mexico tort law apply. Thus the rationale of *Montaño* would dictate that a New Mexico resident receiving care in Colorado, Kansas, Arizona, Utah or elsewhere will have a claim governed by New Mexico law if New Mexico law is more favorable to that plaintiff.

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[20] Plains Memorial Hospital (Dimmit), Cochran Memorial Hospital (Morton), Permian Regional Medical Center (Andrews), Muleshoe Area Medical Center (Muleshoe), Winkler County Memorial Hospital (Kermit), Medical Arts Hospital (Lamesa), Hereford Regional Medical Center (Hereford), Moore County Hospital District (Dumas), Brownfield Regional Medical Center (Brownfield), and Reeves County Hospital District (Pecos). All are county government owned and operated facilities, funded by the taxpayers of the respective counties.

Giving a very broad reading to *Montaño* means it will apply to all personal injury suits, not just medical malpractice suits, and to all commercial claims, if the New Mexico law favors the plaintiff.

This brief focuses on a narrow and limited reading of *Montaño* and the effect it will have in limiting access to care. Disregarding the Texas Tort Claims Act and the sovereignty of Texas law will have a detrimental effect on Eastern New Mexico citizens seeking access to medical care in Texas.

The Amici note that the mere existence of the *Montaño* appellate decision is already causing consternation among Texas and New Mexico health care providers. For example:

Dr. Daniel Good is an ophthalmologist serving in Hobbs, New Mexico. After learning of the *Montaño* case, he expressed his sentiments in unequivocal terms:

"I will not continue to practice in an underserved area," he says, "if I cannot refer patients to physicians across the state line for care that we do not have resources to provide."[21]

Hobbs internist, Dr. John Kernan, echoes those concerns. "There are very few doctors in our area who can provide the level of care and have the clinical expertise that is required to treat seriously ill patients,"[22] he said.

[21] www.montanovfrezzabrief.info/daniel-good%2c-md.html

Randy Marshall, the Executive Director of the New Mexico Medical Society sums up the limitations: "Adequate patient care is dependant upon access to and availability of services. In a perfect world all New Mexicans would have access to primary and specialty care in their home towns," he writes, "thus avoiding the expense, time and inconveience to both the patient and their families as they transport and care for their loved ones outside of their home community. But with the uneven distribution of both population and health care providers in the state, this will never be," he said.

"Limiting patients to physicians and facilities in New Mexico greatly, and negatively, impacts patient's access to basic and specialty care needs,"[23] Marshall said.

Hobbs obstetrician Scott Beard said upholding *Montaño* might financially help him but would hurt his patients. "As a specialist in this portion of New Mexico, I actually personally stand to gain from this situation (*Montaño* ruling) in the short term. However, it is not right for my patients, it is not good law and it will only hurt this portion of New Mexico in the long run,"[24] he said.

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[22] http://www.montanovfrezzabrief.info/john-b.-kernan%2c-md.html
[23] http://www.montanovfrezzabrief.info/new-mexico-medical-society.html
[24] http://www.montanovfrezzabrief.info/scott-beard%2c-md.html

Many legal counselors are cautioning Texas health care providers, both public and private, on the potential increased liability risks of treating New Mexico citizens.

During the past 36 years Lubbock cardiologist Dr. Paul Walter has cared for thousands of New Mexico patients both in Lubbock and satellite facilities in New Mexico.[25] Often that care is emergency cardiac care including acute interventions in patients with heart attacks. Dr. Walter holds medical licenses in New Mexico and Texas.

Dr. Walter tells us "Patients from Eastern New Mexico are reliant on West Texas for a full range of medical care." "My practice," he writes "still contains hundreds, if not thousands, of patients from New Mexico."

Dr. Walter also serves as Chief Medical Officer for Covenant Medical Group, a multi-specialty practice comprised of approximately 180 physicians. Roughly 40% of their patients originate from New Mexico. Dr. Walter says his group serves the full gamut of New Mexico patients ranging from neonates to end-of-life care.

"We have always worked with the understanding that care rendered by Texas physicians in Texas is subject to Texas tort law," he writes. "Apparently, that premise has come into question in a case now before the New Mexico

[25] http://www.montanovfrezzabrief.info/paul-d.-walter%2c-md.html

Supreme Court. Physicians are risk averse. If the *Montaño* ruling stands, I suspect a good many of my colleagues will reconsider providing elective care to New Mexico patients to avoid the increased liability risk. This is poor public policy and would be harmful to New Mexico residents denied care by Texas physicians." This matter hits close to home. The undersigned's mother lives in Quay County but receives medical care in Amarillo.

The letters in the Amicis' possession and posted on www.montanovfrezzabrief.info,[26] including one from SWAT Surgical, support this conclusion that access to care will be reduced if this decision isn't reversed.

Although located in Lubbock, Texas, SWAT Surgical is the major provider of tertiary care for patients residing in Eastern New Mexico. The final two paragraphs of their letter strike a cautionary tone:[27]

"If the *Montaño* ruling stands we will need to reassess the patients we see and the circumstances under which we see them. Liability concerns will move to the forefront, and for that reason, we will need to reconsider the practicality of treating New Mexico patients on an elective basis. Our doctors will need to consider the unpleasant issue of removing our name from all New Mexico health care plans and whether we see any New Mexico citizens for elective procedures."

[26] http://www.montanovfrezzabrief.info
[27] http://www.montanovfrezzabrief.info/chad-southard%2c-fache.html

"Of course, we will continue to treat all New Mexico patients in an emergent condition. However, if we are not members of any New Mexico health care plan then every New Mexico patient we treat (emergent or otherwise) will be out-of-network and paying more for the care they receive. The stark reality is this: An adverse ruling in *Montaño* will limit access to care for thousands of residents living in Eastern New Mexico."

"Our group practice sees lots of sick, high-risk patients", said El Paso cardiologist Dr. Juan Escobar. "If the appellate Court's decision stands, our practice will be discouraged from seeing high-liability risk patients from New Mexico. That is not my desire but it is a decision that may be forced upon us."[28] Some Texas providers may be so risk adverse that they will respond to *Montaño* more indirectly. They might decline to further participate in health insurance programs that require treatment of New Mexico patients. They might ask health carriers for an increased reimbursement rate for New Mexico patients and then reconsider their options if that rate hike request is refused.

If *Montaño* stands, professional liability carriers will be forced to either increase the premiums for Texas physicians who provide health care in Texas to New Mexico citizens or exclude or surcharge for coverage for such services. At least some health care providers will decide to limit their practice to Texas

[28] http://www.montanovfrezzabrief.info/juan-escobar,-md.html

residents, and cancel their contracts with New Mexico health plans, rather than incur extra liability insurance costs.

XI. Liability Pressures and Their Effects on the Practice Habits of Physicians

What is the relationship between litigation risk and access to care? Texas faced a medical liability crisis beginning in the late 1990s. The frequency of lawsuits against doctors and hospitals and the severity of awards noticeably increased. Medical liability premiums doubled in the span of four years.[29] Over 25 insurance companies stopped writing business in Texas, withdrew from the state or went bankrupt.[30] At the height of the crisis nearly 9,000 Texas physicians (24% of the commercial market) were non-renewed by their insurance carrier.[31] Many doctors simply refused to take emergency call. Patients lost access to thousands of high-risk specialists.

The Texas Legislature passed a series of reforms in 2003 that addressed both the frequency and severity of claims.[32] The result has been a substantial reduction

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[29] "Medical malpractice insurance overview and discussion." Study presented by Jose Montemayor, Commissioner of Insurance, Texas Department of Insurance to Texas House Committee on Civil Practices, Page 6, 78th Texas Legislature, Regular Session (Feb. 12, 2003).

[30] McDaniel, K.P "Crisis and Response: A Report on the Texas medical malpractice insurance market." *Health Law News*. P. 4 (Nov. 2005).

[31] *Ibid.*

[32] Michael S. Hull et al., *House Bill 4 and Proposition 12: An Analysis with Legislative History,* 36 TEX. TECH L. REV. 1 (2005)

in the drain of health provider resources. More than two-thirds of the state's 22 trauma service areas (TSA's) experienced a per capita loss in patient care physicians during the liability crisis years.[33] Since then, 80% of the TSA's have experienced a per capita gain. During the post-crisis period (2005-2013) the number of high-risk specialists in Texas grew more than twice as fast as the state's population.[34] Many Texas physicians are unwilling to return to the pre-reform liability environment that would occur when treating New Mexico patients.

The sensitivity that Texas doctors have to liability concerns is well-documented. University of Texas Economics professor Stephen Magee summarized these findings in a recent academic paper.[35]

Professor Magee writes: "The 2003 Texas Medical Association Liability Study showed that 62% of doctors reported that they began denying or referring high-risk cases in the two years directly preceding reforms. Half of those same respondents (50.8%) reported that they had completely stopped providing certain

[33] Texas Alliance For Patient Access, "The truth about Texas' medical lawsuit reforms", Page 6. An analysis of county-specific direct patient care physicians posted by Texas Department of State Health Services.
[34] Texas Alliance For Patient Access, "The truth about Texas' medical lawsuit reforms", Page 7. An analysis of county-specific direct patient care physicians posted by Texas Department of State Health Services.
[35] "Physician Per Capita Measurement Error and the 2003 Medical Malpractice Reforms: Supply Effects on Existing Physicians Are Rapid and Larger Than on New Physicians."

services to their patients. Some 79.2% of these doctors cited pressures from rising professional liability costs as "very important" to their decision to limit care. In the first year after reform, the 62 percent number in 2003 dropped to 36 percent in 2004;[36] by 2008, it had dropped to 16%."[37]

"Results from the 2010 Texas Medical Liability Survey show a demonstrable change in both the attitude and behavior of Texas physicians since the passage of reforms seven years before. Three-fourths of Texas physicians and 88% of surgeons rated the medical malpractice liability climate much better in early 2010 than in 2003."

He goes on to write: "38.7% of respondents said they would reduce or eliminate emergency room care if the state's 2003 reforms were repealed. Fifty-eight percent said they would reduce or eliminate treatment of high-risk patients."

Clearly, an increase in the risk of litigation has been shown to have an adverse impact on access to care. For example, Southwest Retina Consultants has been providing specialty care to El Paso and southern New Mexico for over 30 years.[38] They are the *sole provider* of vitreoretinal services in the area. The next closest surgeons are located in Tucson, Albuquerque and Lubbock. That means

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[36] This 36% number Professor Magee calculates as the average of 20% (the number in the 2004 survey) and 52%. The latter would be the number without replacement; i.e., if none of the physicians in the 2004 survey were in the 2003 survey.

[37] 2008 Texas Medical Association Liability Study.

[38] http://www.montanovfrezzabrief.info/greg-trubowitsch,-md.html

anyone in southern New Mexico with retinal detachments, cataract surgery complications, diabetic eye complications, and age-related macular degeneration must see them or travel over three hours.

"We save people from blindness," said Dr. Greg Trubowitsch. "In most cases, time is of the essence and delay in finding care means blindness. We have provided a satellite location in Las Cruces for the convenience of elderly patients in southern New Mexico."

After learning the details of the *Montaño* case, he said his group is "seriously discussing closing our office in Las Cruces and reconsidering providing any care to New Mexicans under any circumstances."

XII. Conclusion and Questions to Ponder

New Mexico public policy favors access to care. The *Montaño* opinion fails to consider that public policy or the effect its decision will have on access to care. The Amici note that the Members of this Court have substantial legal experience gained prior to becoming Justices. In light of this experience, the Amici invite the Court to consider a scenario where a physician, hospital, hospital district, or liability insurance client asks for your advice in light of the Court of Appeals' decision. Given that the premise of the *Montaño* opinion is that the New Mexico plaintiff's remedy is greater using New Mexico law, doesn't it stand to reason that

the exposure and litigation risk is greater (or could be greater) for your Texas client when he thought Texas law applied?

If the exposure is higher, if the frequency will likely increase, if the litigation risks will be greater, doesn't a health care provider or insurer consider how to control for those risks and costs? Doesn't the range of choices include ignoring the risk (an imprudent choice), increasing the amount of insurance (at a cost),or increasing the reserve (at a cost). Don't those considerations include increasing the tax base to pay for the increased costs (for an entity with taxing authority) or reducing the exposure and the costs by limiting the patients the providers see? If the *Montaño* is affirmed, isn't it likely that:

Carriers will advise their insureds that their current insurance policies may not adequately protect them from their increased exposure?

Carriers will raise the professional liability rates for those insureds that provide care in Texas to citizens of New Mexico?

County Commissioners (who have budget responsibilities for a Texas county hospital that treats patients from New Mexico), will have to consider asking the citizens of that county to raise their own taxes to cover the increased costs of litigation. How likely is it that Texas taxpayers will vote to increase their tax burden so New Mexico citizens can receive elective medical care in Texas? If a tax increase is not approved how does a Texas county hospital pay its increased costs?

Will a Texas health care provider be financially able to continue to contract with New Mexico health plans and accept elective transfers or referrals from New Mexico facilities or New Mexico health care providers?

Doesn't part of the uncertainty created by *Montaño* arise from that fact that in some instances New Mexico's regulatory and statutory guidelines for standards of care and treatment differ from that of Texas. Will Texas health care providers choose to provide that elective care knowing that they could face a whole new set of standards and guidelines with which they are not familiar?

Some might argue that one can't reliably forecast the degree to which litigation risks and costs will rise. The argument misses the point. No one can credibly contend there won't be some increase in litigation risk and cost. The difficulty in quantifying the exact amount of the increase, the huge uncertainty that *Montaño* creates, is largely absent under Texas law course of action.

So, faced with increased litigation risk, increased costs, and with uncertainty, with the prospects of raising rates or taxes, isn't it likely that some providers reconsider whether to see New Mexico patients on an elective basis? Wouldn't a reasonably prudent lawyer advise a client that one approach to address the cost issues and the uncertainty *Montaño* creates is to reconsider seeing New Mexico patients?

Federal law (EMTALA) requires emergency medicine physicians to stabilize and treat any patient in an emergent condition, regardless of their insurance status, ability to pay, or citizenship. Texas law extends liability protections to physicians who provide emergency or post-emergency stabilization services to patients in hospitals owned or operated by a unit of local government. If the *Montaño* decision stands, these ER physicians, working with limited information and serious time constraints, will operate with no liability protections when treating patients from New Mexico.

The Amici ask the Court to consider:

Will a ruling for *Montaño* reduce the number of ER physicians who are willing to practice in these areas, given the increased liability exposure, as occurred in Texas before the 2003 medical lawsuit reforms were enacted?

The current practice in Texas is to transfer a patient admitted through the ER to a regular hospital bed once the "emergency" is over. Should Texas hospitals that are by law required to treat New Mexico residents that present in an emergency condition have to consider a transfer to a New Mexico facility once the patient is stable? Does New Mexico have sufficient resources to meet that increased demand?

What if, instead of a Texas lawyer, a lawyer in Colorado or Arizona is asked the same questions about *Montaño* regarding increased litigation risk and costs?

Can one confidently rule out, at this juncture, that *Montaño* will create no additional risk for health care providers in bordering states other than Texas that see New Mexico patients in the provider's home state?

According to El Paso cardiologist Dr. Juan Escobar,[39] doctors in Las Cruces routinely refer or transfer Jehovah's Witness patients needing heart bypass surgery to El Paso doctors and hospitals. They do this because, as a matter of faith, followers of Jehovah's Witness refuse blood transfusions making them higher risk patients. Las Cruces heart surgeons are unwilling to accept the risk, says Dr. Escobar, whereas some of the more experienced heart surgeons in El Paso are willing to perform such surgery. That will likely change, he said, if the lower Court's ruling stands in the *Montaño* case.

XIII. The Amici Statements of Interest

The Amici are concerned about access to care for the citizens of Eastern New Mexico. The Amici include:

The New Mexico Medical Society ("NMMS") is a 501(c)(6) not-for-profit corporation representing the interest of 2,700 members, approximately 85% of the physicians practicing in New Mexico. The purposes of this Society are to bring into one organization reputable and ethical doctors; Doctors of Medicine and Osteopathy of the State of New Mexico, as well as post-graduate residents and students in good

[39] www.montanovfrezzabrief.info/juan-escobar%2c-md.html

standing at the University of New Mexico School of Medicine. Additional purposes of the NMMS include extending medical knowledge, advancing medical science, elevating the standard of medical education, and securing the enactment and enforcement of just medical laws.

The New Mexico Hospital Association ("NMHA") is a private, voluntary, non-profit association of 44 member hospitals in the state of New Mexico. NMHA is a 70 year old organization that represents the interest of its members on legislative, regulatory, and public information issues. These are issues that affect the quality, affordability, and continuity of health care services for New Mexico citizens. NMHA works with others, including physicians and other health care providers, to improve the health status of the people of New Mexico. NMHA and its members have an interest in the issue before the Court, because the practical effect of the Court of Appeals decision would limit access to and continuity of the delivery of healthcare to New Mexico. This is particularly true in the New Mexico communities bordering Texas that rely heavily on the use of Texas physicians for referrals to specialty care. Physicians in southeast New Mexico are already reporting that Texas physicians are declining to accept referrals based on their perceived risk of greater liability exposure as a result of the Court of Appeals' decision. Lack of border health access cannot be accommodated by similar services in Albuquerque which are distant and at maximum capacity. The ultimate

result is that patients in the region will have a higher likelihood to seek care in hospital emergency rooms for unmanaged medical conditions.

The Regents of the University of New Mexico, for its public operation known as the **UNM Health Sciences Center** including UNM Hospitals and the UNM School of Medicine, and UNM Medical Group, Inc. (the "University") is a constitutionally-created educational institution which serves as the State of New Mexico's only academic health center and the State of New Mexico's only Level 1 Trauma Center, and the State of New Mexico's only National Cancer Institute-designated Comprehensive Cancer Center. In many ways, the UNM Hospitals serve as the backbone of the health care system in New Mexico. The UNM School of Medicine employs the 900 faculty members who are medical providers both at UNM Hospitals and across the State of New Mexico. UNM Medical Group, Inc., a New Mexico non-profit and University Research Park and Economic Development Act corporation, is a wholly-owned subsidiary of the University and serves as the faculty practice organization for the medical faculty at the UNM School of Medicine. In addition, UNM Medical Group, Inc., with state funding, operates a physician locum tenens service to support the needs of rural physicians across the State of New Mexico. Access to health care in New Mexico is of critical importance to New Mexico. Because of distance limitations, in certain areas of New Mexico access to tertiary level health care with Texas state institutions and

Texas physicians is of paramount importance. The University and UNM Medical Group, Inc. have an interest in the issue before the Court, because the practical effect of the Court of Appeals decision would be to limit access to and continuity of the delivery of healthcare to New Mexico, particularly in the New Mexico communities bordering Texas that rely heavily on the use of Texas state institutions and Texas physicians for referrals to specialty care. Physicians in southeast New Mexico are already reporting that Texas physicians are declining to accept referrals based on their perceived risk of greater liability exposure as a result of the Court of Appeals decision. Lack of border health access cannot be accommodated by similar services in Albuquerque which are distant and at maximum capacity. The ultimate result is that patients in the region will have a higher likelihood to seek care in hospital emergency rooms for unmanaged medical conditions.

Nor-Lea Hospital District is a 25 bed Critical Access Hospital located in Lovington, New Mexico. Nor-Lea provides a wide array of primary and specialty care services including five family practice clinics, cardiology, gastroenterology, neurology, ENT, pain management, wound care, rheumatology, oncology, general surgery and gynecology. In addition to these services, Nor-Lea operates a Level IV trauma center that serves the northern half of Lea County located along the Texas

border. Nor-Lea refers 70 percent of its tertiary patients to either Covenant Medical Center or UMC both located in Lubbock, Texas.

Nor-Lea is a non-profit community hospital with the mission to serve all residents in Lea County and the surrounding area with a focus on quality and compassionate care.

Curry, Roosevelt and De Baca County Medical Society ("CRDCMS"). The medical society serves farming, ranching and military communities with a total population of 72,330. CRDCMS is the voice of organized medicine at the local level. Many of the medical society's member physicians refer patients from Clovis and Portales to Lubbock for specialty care.

Chaves County Medical Society ("CCMS"). Chaves County has a population of 65,878. CCMS is the voice of organized medicine at the local level. Many of the member physicians of the Chaves County Medical Society refer patients from Roswell to Lubbock for specialty care.

Doña Ana County Medical Society (DACMS"). Doña Ana County has a population of 213,676. It's the home of Las Cruces, the largest southern city in New Mexico. DACMS is the voice of organized medicine at the local level. Many of the member physicians of the Doña Ana County Medical Society refer patients from Las Cruces to El Paso for specialty care.

Eddy County Medical Society (“ECMS”). Eddy County has a population of 56,395. ECMS is the voice of organized medicine at the local level. Many of the member physicians of the Eddy County Medical Society refer patients from Artesia and Carlsbad to Lubbock for specialty care.

The Texas Orthopaedic Association ("TOA") was founded in 1936 as a non-profit association that represents more than 1,200 orthopaedic surgeons in Texas. TOA's mission is to ensure outstanding musculoskeletal health for Texans. TOA serves as the public policy voice for Texas orthopaedic surgeons.

Lea County Medical Society (“LCMS”). Lea County has a population of 68,062. LCMS is the voice of organized medicine at the local level. Many of the member physicians of the Lea County Medical Society refer patients from Lovington and Hobbs to Odessa, Midland, and Lubbock for specialty care.

Otero County Medical Society (“OCMS”). Otero County has a population of 65,616. OCMS is the voice of organized medicine at the local level. Many of the member physicians of the Otero County Medical Society refer patients from Alamogordo to El Paso for specialty care.

The Texas Medical Association (“TMA") is a private, voluntary, non-profit association of more than 47,000 Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, TMA’s

maxim continues in the same direction: Physicians caring for Texans. TMA's diverse physician members practice in all fields of medical specialization. TMA supports Texas physicians by providing distinctive solutions to the challenges they encounter in the care of patients.

The Texas Hospital Association ("THA") is a non-profit trade association that represents 459 hospitals across the state. THA advocates for state and national legislative, regulatory, and judicial actions in support of accessible, cost-effective, high-quality health care. As a representative of its member hospitals the THA is vitally interested in and concerned about the matters before this Court, which will affect the liability of hospitals.

The Texas Nurses Association ("TNA") is a non-profit statewide membership association of over 10,000 licensed nurses. Founded in 1907, TNA is the oldest and largest nursing association in Texas. TNA members come from all practice settings: Hospital, home and community health, public health, higher education, long-term care, school health, and policy. As diverse as they are, TNA members share a common purpose: Advancing excellence in nursing. TNA supports nursing in every form in its educational and advocacy initiatives and supports rural access to health by all patients.

Texas Organization of Rural & Community Hospitals ("TORCH") is a full-service trade association and serves as the voice and principal advocate for the

more than 150 rural and community hospitals in Texas. TORCH provides leadership in addressing the special needs and issues of these rural and community hospitals, their staffs and the patients they serve. Among their member hospitals are ten West Texas facilities near the New Mexico border. These community hospitals include Permian Regional Medical Center (Andrews), Coon Memorial Hospital (Dalhart), Plains Memorial Hospital (Dimmit), Moore County Hospital District (Dumas), Hereford Regional Medical Center, Winkler County Memorial Hospital (Kermit), Lamesa Medical Arts Hospital, Cochran Memorial Hospital (Morton), Muleshoe Area Medical Center, and Yoakum Community Hospital (Denver City).

The American Association of Orthopaedic Surgeons ("AAOS") is a not-for-profit association with more than 40,000 members, is engaged in health policy and advocacy on behalf of musculoskeletal patients and professionals specializing in orthopaedic surgery. Founded in 1997 by the American Academy of Orthopaedic Surgeons, its mission is to serve the profession, champion the interests of patients, and advance patients' access to the highest quality of musculoskeletal care.

Lubbock-Crosby-Garza County Medical Society is an organization of more than 1400 physicians, residents and medical students dedicated to providing health care of the highest quality. The mission of the Lubbock-Crosby-Garza

County Medical Society is to unite physicians in the region to advocate for physician and patient rights.

The El Paso County Medical Society is comprised of 1100 physicians, residents and medical students dedicated to providing health care of the highest quality. The mission of the El Paso County Medical Society is to unite physicians in the region to advocate for physician and patient rights.

The Harris County Medical Society ("HCMS") is a private, voluntary, non-profit association of more than 11,600 physicians and medical students. HCMS was founded in 1903 to serve as the leading advocate for our member physicians, their patients and our community. HCMS promotes the best standards of ethical medical practice, access to quality medical care, medical education, research, and community health. HCMS's diverse physician members practice in all fields of medical specialization and all types of practice settings.

The Dallas County Medical Society, established in 1876, is a professional organization of approximately 7,200 local physicians, medical students and residents dedicated to serving patients. The mission of the Dallas County Medical Society is to advocate for physicians and their patients, to promote a healthy community and to enhance professionalism in the practice of medicine.

The Texas Osteopathic Medical Association ("TOMA") is a private, voluntary, non-profit association, founded in 1900, to serve and represent the

professional interests of more than 5,000 licensed osteopathic physicians in Texas. TOMA's mission is to promote health care excellence for the people of Texas, advance the philosophy and principles of osteopathic medicine and to loyally embrace the family of the osteopathic profession and serve their unique needs.

Texas Podiatric Medical Association ("TPMA") is a 501(c)(6) tax exempt professional association with more than 675 members who are Doctors of Podiatric Medicine, often referred to as *"DPMs."* TPMA is interested in the *Montaño v. Frezza* case because we strongly believe that Texas licensed DPMs who provide podiatric medical services **in Texas** to non-Texas residents should not be subject to personal jurisdiction and the laws of another state where the DPM does not practice podiatric medicine.

Lubbock Diagnostic Radiology ("LDR") is comprised of more than 20 board certified radiologists with sub-specialists in neuroradiology, vascular interventional radiology, musculoskeletal imaging, body imaging, and diagnostic imaging. LDR is the professional services provider for Covenant Health System (977 licensed beds), the largest health care system in the West Texas and Eastern New Mexico region. Additionally, LDR works with five rural and community hospitals, a physician-owned heart and surgical hospital, and 16 other local and regional practices and clinics. LDR operates two full service, state of the art imaging centers, Lubbock Radiology, LP and Covenant Diagnostic Imaging.

El Paso Orthopaedic Surgery Group ("EPOSG") is the largest orthopaedic group in the Southwest comprised of more than 20 physicians who are all board certified. The group has a rich and strong history of serving the El Paso and Southern New Mexico region for over 75 years. These orthopaedic surgeons provide unique, sub-specialty care in musculoskeletal disorders with fellowship training in orthopedic oncology, hand and elbow surgery, sports medicine, advanced knee and shoulder reconstruction, foot and ankle reconstruction and revision total joint arthroplasty. EPOSG has the only fellowship trained musculoskeletal oncology surgeon south of Albuquerque and west of San Antonio. This doctor serves as the only tumor surgeon consultant in the area.

Tenet Healthcare Corporation is a diversified healthcare services company that operates 19 acute care hospitals, 13 short-stay surgical hospitals and over 80 outpatient centers in Texas through its subsidiaries, partnerships and joint ventures. In El Paso, Tenet's three acute care hospitals, one children's hospital and more than 10 outpatient centers serve a large number of patients from New Mexico.

HCA Holdings, Inc. ("HCA") operates a combined 77 acute care hospitals and surgical centers in Texas. Among these are Del Sol Medical Center and Las Palmas Medical Center (both in El Paso) that serve a large number of patients from

New Mexico. HCA has a vital interest in the proper application of Texas law to the liability of hospitals and related ancillary health care facilities.

Texas Oncology is a network of 370-plus physicians and oncology specialists who provide advanced treatment options to cancer patients in underserved rural and urban communities throughout Texas. This network of cancer treatment centers has more than 100 sites of service throughout the state, including multiple treatment centers in El Paso and Amarillo. With Texas Oncology's community-based services, patients have the convenience of receiving most or all medical services and support services under one roof in or near their community.

Texas Alliance for Patient Access ("TAPA") is a statewide association of more than 250 health care interests providing medical care to Texas residents. Its members include physicians, hospitals, long-term care facilities, charitable clinics, medical liability carriers; all with an interest in ensuring timely access to quality healthcare.

The American Medical Association (AMA) is the largest professional association of physicians, residents and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all US physicians, residents and medical students are represented in the AMA's policy-making

process. The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty area and in every state, including New Mexico and Texas. The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition of the AMA and the medical societies of each state, plus the District of Columbia, whose purpose is to represent the viewpoint of organized medicine in the Courts.

The American College of Emergency Physicians ("ACEP") is a nonprofit, voluntary professional and educational society of over 32,000 emergency physicians practicing in the United States and other countries. Founded in 1968, ACEP is the nation's oldest and largest association of emergency physicians. ACEP fosters the highest quality of emergency medical care through several means. These include the education of emergency physicians; the promotion of research; the development and promotion of public health and safety initiatives; and the provision of leadership in the development of health care policy.

Texas College of Emergency Physicians ("TCEP") is a non-profit organization comprised of more than 2,050 emergency medicine physicians in Texas. The membership includes emergency physicians who practice in a wide range of settings, including: large and small groups, academic centers, urban and

rural, board certified and non-board certified, residents and medical students. TCEP promotes the delivery of quality care for all patients receiving emergency treatment in Texas.

The American Association of Orthopaedic Surgeons ("AAOS"), a not-for-profit association with more than 40,000 members, is engaged in health policy and advocacy on behalf of musculoskeletal patients and professionals specializing in orthopaedic surgery. Founded in 1997 by the American Academy of Orthopaedic Surgeons, its mission is to serve the profession, champion the interests of patients, and advance patients' access to the highest quality of musculoskeletal care.

The Amici urge the Court to weigh the access to care ramifications of its decision and respectfully reverse the lower Court decision.

Dated this 9th day of October, 2015.

Respectfully submitted

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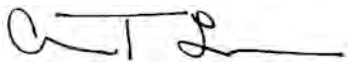

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