

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 970

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO INSURANCE; ENACTING THE PROFESSIONAL MEDICAL
LIABILITY INSURANCE ACT; LIMITING AWARDS FOR HEALTH CARE
LIABILITY CLAIMS TO PROVIDE GREATER AVAILABILITY OF
PROFESSIONAL MEDICAL LIABILITY INSURANCE; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new Section 41-14-1 NMSA 1978 is enacted to
read:

"41-14-1. [NEW MATERIAL] SHORT TITLE.--Chapter 41,
Article 14 NMSA 1978 may be cited as the "Professional Medical
Liability Insurance Act"."

Section 2. A new Section 41-14-2 NMSA 1978 is enacted to
read:

"41-14-2. [NEW MATERIAL] PURPOSE OF ACT.--The purpose of
.165651.1

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 the Professional Medical Liability Insurance Act is to promote
2 the health and welfare of the people of New Mexico by making
3 available professional liability insurance for health care
4 providers in New Mexico."

5 Section 3. A new Section 41-14-3 NMSA 1978 is enacted to
6 read:

7 "41-14-3. [NEW MATERIAL] DEFINITIONS.--As used in the
8 Professional Medical Liability Insurance Act:

9 A. "affiliate" means a person that, directly or
10 indirectly through one or more intermediaries, controls, is
11 controlled by or is under the common control of or is under
12 common ownership with a specified person or entity, including a
13 direct parent or subsidiary;

14 B. "claimant" means a person, including a
15 decedent's estate, seeking or that has sought recovery of
16 damages in a health care liability claim; provided that all
17 persons claiming to have sustained damages as the result of
18 injury to or the death of the same person, regardless of the
19 theory of liability, are considered a single claimant for
20 purposes of the Professional Medical Liability Insurance Act;

21 C. "control" means to possess, directly or
22 indirectly, the power to direct or cause the direction of the
23 management and policies of a person, whether through ownership
24 of equity or securities, by contract or otherwise;

25 D. "court" means a federal or state court;

.165651.1

1 E. "economic damages" means compensatory damages
2 intended to compensate a claimant for actual economic or
3 pecuniary loss, including the expenses of necessary health care
4 received before judgment or estimated for the future for
5 treatment of an injury; "economic damages" does not include
6 exemplary damages or noneconomic damages;

7 F. "exemplary damages" means damages awarded as a
8 penalty or by way of punishment but not as economic damages or
9 noneconomic damages; "exemplary damages" includes punitive
10 damages;

11 G. "future damages" means damages that are incurred
12 after the date of judgment for:

13 (1) medical, health care or custodial care
14 services;

15 (2) physical pain and mental anguish,
16 disfigurement or physical impairment;

17 (3) loss of consortium, companionship or
18 society; or

19 (4) loss of earnings;

20 H. "future loss of earnings" means the following
21 losses incurred after the date of the judgment:

22 (1) loss of income, wages or earning capacity
23 and other pecuniary losses; and

24 (2) loss of inheritance;

25 I. "health care" means medical care or an act or

underscoring material = new
[bracketed material] = delete

1 treatment performed or furnished, or that should have been
2 performed or furnished by a health care provider, for, to or on
3 behalf of a patient during the patient's medical care,
4 treatment or confinement;

5 J. "health care institution" means an organization
6 or legal entity that provides health care, including an
7 ambulatory surgical center, an assisted living facility, an
8 emergency medical services provider, a home and community-based
9 services waiver program for persons with mental retardation
10 adopted in accordance with Section 1915(c) of the federal
11 Social Security Act, a home and community support services
12 agency, a hospice, a hospital, a hospital system, an
13 intermediate care facility for the mentally retarded, a nursing
14 home or skilled nursing facility, an end stage renal disease
15 facility or other facility defined as a "health facility" in
16 the Public Health Act;

17 K. "health care liability claim" means a cause of
18 action against a health care provider for treatment, lack of
19 treatment or other claimed departure from accepted standards of
20 medical care, health care, safety or professional or
21 administrative services directly related to medical care or
22 health care that proximately results in injury to or death of a
23 claimant, whether the claimant's claim or cause of action
24 sounds in tort, contract or other theory of liability,
25 including negligence, negligence per se, negligent hiring,

.165651.1

underscored material = new
[bracketed material] = delete

1 malpractice, breach of contract, wrongful death, physical or
2 psychological injury, loss of consortium, lack of informed
3 consent, defamation, loss of chance, infliction of emotional
4 distress or unfair trade practice brought pursuant to the
5 Unfair Practices Act;

6 L. "health care professional" means a physician; a
7 physician assistant; an osteopathic physician's assistant; a
8 radiation therapy technologist; a nuclear medicine
9 technologist; a radiographer; a naprapathic practitioner; a
10 radiologic technologist; an athletic trainer; a respiratory
11 care practitioner; a registered nurse; a licensed practical
12 nurse; a certified nurse practitioner; a certified nurse
13 anesthetist; a dentist; a dental hygienist; a pharmacist; a
14 nursing home administrator; a psychologist; a nurse assistant
15 or aide; a certified medication aide; an optometrist; a
16 certified nurse-midwife; a physical, occupational or speech
17 therapist or therapy assistant; a speech-language pathologist;
18 or an audiologist;

19 M. "health care provider" means a person licensed,
20 certified, registered or chartered by the state to provide
21 health care, including the following:

- 22 (1) a health care institution or facility;
23 (2) a health care professional;
24 (3) an officer, director, shareholder, member,
25 partner, manager, owner, parent organization, subsidiary or

.165651.1

underscored material = new
[bracketed material] = delete

1 affiliate of a health care provider; and

2 (4) an employee, independent contractor or
3 agent of a health care provider acting in the course and scope
4 of the employment of that person or within the scope of a
5 contractual relationship;

6 N. "home and community support services agency"
7 means a licensed public or provider agency to which the Long-
8 term Care Services Act applies;

9 O. "hospice" means a hospice facility or activity
10 regulated by the department of health pursuant to the Public
11 Health Act;

12 P. "hospital" means a private or public hospital
13 regulated by the department of health pursuant to the Public
14 Health Act;

15 Q. "hospital system" means more than one hospital
16 located in the state that is under the common governance or
17 control of a corporate parent;

18 R. "intermediate care facility for the mentally
19 retarded" means an institution regulated by the department of
20 health pursuant to the Public Health Act that provides services
21 to developmentally disabled individuals;

22 S. "nominal damages" means a trifling sum awarded
23 when a legal injury is suffered but when there is no
24 substantial loss or injury to be compensated;

25 T. "noneconomic damages" means damages awarded for

.165651.1

underscored material = new
[bracketed material] = delete

1 the purpose of compensating a claimant for physical pain and
2 suffering, mental or emotional pain or anguish, loss of
3 consortium, disfigurement, physical impairment, loss of
4 companionship and society, inconvenience, loss of enjoyment of
5 life, injury to reputation and all other nonpecuniary losses of
6 any kind other than exemplary damages;

7 U. "nursing home" means a licensed public or
8 private institution, providing skilled nursing or long-term
9 care services, to which the Public Health Act applies;

10 V. "periodic payments" means the payment of money
11 or its equivalent to the recipient of future damages at defined
12 intervals;

13 W. "pharmacist" means a person licensed pursuant to
14 Chapter 61, Article 11 NMSA 1978 who provides services that may
15 subject the health care provider to health care liability
16 claims;

17 X. "physician" means an individual licensed
18 pursuant to:

- 19 (1) the Chiropractic Physician Practice Act;
- 20 (2) the Medical Practice Act;
- 21 (3) the Podiatry Act; or
- 22 (4) Chapter 61, Article 10 NMSA 1978;

23 Y. "professional services" means duties or services
24 that a health care provider is required to provide as a
25 condition of maintaining the health care provider's license,

.165651.1

underscored material = new
[bracketed material] = delete

1 accreditation status or certification to participate in state
2 or federal health care programs; "professional services"
3 includes administrative services;

4 Z. "reckless conduct" means the intentional doing
5 of an act with utter indifference to the consequences;

6 AA. "representative" means the spouse, parent,
7 guardian, trustee, authorized attorney or other authorized
8 legal agent of the patient or claimant; and

9 BB. "willful conduct" means the intentional doing
10 of an act with knowledge that harm may result."

11 Section 4. A new Section 41-14-4 NMSA 1978 is enacted to
12 read:

13 "41-14-4. [NEW MATERIAL] TERMS OF ART--COMMON LAW
14 MEANING.--The meaning of a term of art used in the Professional
15 Medical Liability Insurance Act and not defined in that act
16 shall be read to have a meaning consistent with its meaning in
17 common law."

18 Section 5. A new Section 41-14-5 NMSA 1978 is enacted to
19 read:

20 "41-14-5. [NEW MATERIAL] SOVEREIGN IMMUNITY--CONFLICT
21 WITH OTHER LAWS.--

22 A. The Professional Medical Liability Insurance Act
23 does not waive the sovereign immunity of the state as made
24 explicit in the Tort Claims Act. The Tort Claims Act shall
25 control if a conflict arises between the provisions of the

.165651.1

underscored material = new
[bracketed material] = delete

1 Professional Medical Liability Insurance Act and the provisions
2 of the Tort Claims Act.

3 B. Except in the case of the Tort Claims Act, a
4 conflict arising between the Professional Medical Liability
5 Insurance Act and another act of New Mexico law, the
6 Professional Medical Liability Insurance Act shall control
7 within constitutional limits; provided, however, that the
8 Professional Medical Liability Insurance Act shall not apply to
9 a health care liability claim in which the defendant is a
10 health care provider pursuant to the Medical Malpractice Act
11 and qualifies to receive the benefits of the provisions of the
12 Medical Malpractice Act."

13 Section 6. A new Section 41-14-6 NMSA 1978 is enacted to
14 read:

15 "41-14-6. [NEW MATERIAL] PLEADINGS PROHIBITED FROM
16 STATING DAMAGE AMOUNT CLAIMED--SPECIAL EXCEPTION--EXCLUSION
17 FROM SECTION.--

18 A. Pleadings in an action presenting a health care
19 liability claim shall not specify an amount of money claimed as
20 damages.

21 B. A defendant may file a special exception to the
22 pleadings on the grounds that the health care liability claim
23 is not within the court's jurisdiction due to the amount in
24 controversy, in which event the claimant shall inform the court
25 and defendant in writing of the total amount of monetary

.165651.1

underscored material = new
[bracketed material] = delete

1 damages claimed.

2 C. A party is not prohibited from mentioning the
3 total amount of monetary damages claimed in examining
4 prospective jurors on voir dire or in argument to the court or
5 jury."

6 Section 7. A new Section 41-14-7 NMSA 1978 is enacted to
7 read:

8 "41-14-7. [NEW MATERIAL] APPLICATION OF RES IPSA
9 LOQUITUR.--The common law doctrine of res ipsa loquitur shall
10 only apply to health care liability claims against health care
11 providers in those cases to which it has been applied by the
12 appellate courts of New Mexico as of July 1, 2007."

13 Section 8. A new Section 41-14-8 NMSA 1978 is enacted to
14 read:

15 "41-14-8. [NEW MATERIAL] CLAIMS BASED ON VICARIOUS
16 LIABILITY.--In a health care liability claim brought pursuant
17 to the Professional Medical Liability Insurance Act in which
18 the claimant alleges that a health care provider was acting
19 within the course and scope of the health care provider's
20 employment for the employer of the health care provider in
21 delivering the health care at issue in the claim, the claim
22 shall be brought against the employer and not against the
23 health care provider who is an employee, unless the employer
24 denies in a responsive pleading that the employee was acting in
25 the course and scope of the employee's employment."

.165651.1

underscored material = new
[bracketed material] = delete

1 Section 9. A new Section 41-14-9 NMSA 1978 is enacted to
2 read:

3 "41-14-9. [NEW MATERIAL] NONECONOMIC DAMAGES--
4 LIMITATION--EXCEPTION.--

5 A. In an action on a health care liability claim
6 brought pursuant to the Professional Medical Liability
7 Insurance Act where final judgment is rendered against one or
8 more health care providers, the aggregate limit of civil
9 liability for noneconomic damages for all health care
10 providers, inclusive of all persons and entities for which
11 vicarious liability theories may apply, shall be limited to an
12 amount not to exceed two hundred fifty thousand dollars
13 (\$250,000) for each claimant.

14 B. Subsection A of this section does not apply to
15 the amount of economic damages awarded on a health care
16 liability claim.

17 C. The liability of an insurer under a theory of
18 recovery shall not exceed the liability of the insured.

19 D. In a health care liability claim that is tried
20 by a jury in a court in New Mexico, the jury shall not be
21 informed of the limitation on noneconomic damages set forth in
22 this section. The judge shall appropriately reduce an award of
23 noneconomic damages that exceeds the limitation."

24 Section 10. A new Section 41-14-10 NMSA 1978 is enacted
25 to read:

.165651.1

underscored material = new
[bracketed material] = delete

1 "41-14-10. [NEW MATERIAL] EXEMPLARY DAMAGES--PROCEDURE
2 FOR AWARDING--STANDARD OF RECOVERY.--

3 A. A determination of whether exemplary damages may
4 be awarded shall be made pursuant to this section and Sections
5 41-14-11 through 41-14-19 NMSA 1978.

6 B. Except as provided Subsection E of this section,
7 exemplary damages may be awarded in an action brought pursuant
8 to the Professional Medical Liability Insurance Act only if the
9 claimant proves by clear and convincing evidence that the harm
10 with respect to which the claimant seeks recovery of exemplary
11 damages results from conduct that is willful, wanton, malicious
12 or reckless.

13 C. A jury shall award in an action pursuant to the
14 Professional Medical Liability Insurance Act an amount of
15 exemplary damages based on reason and justice, and determine
16 that the amount of the award is reasonably related to the
17 injury and to damages given as compensation and not
18 disproportionate to the circumstances. Before entering
19 judgment in an action pursuant to the Professional Medical
20 Liability Insurance Act for an award of exemplary damages, the
21 trial court shall ascertain that the award is based on reason
22 and justice, that the amount is reasonably related to the
23 injury and to damages given as compensation. The court shall
24 ascertain that the award for exemplary damages is not
25 disproportionate to the circumstances.

.165651.1

underscoring material = new
[bracketed material] = delete

1 D. The burden of proving the elements of Subsection
2 A of this section by clear and convincing evidence may not be
3 shifted to the defendant health care provider or satisfied by
4 evidence of ordinary negligence, gross negligence, bad faith or
5 a deceptive trade practice.

6 E. If the claimant relies on a statute establishing
7 a cause of action and authorizing exemplary damages in
8 specified circumstances or in conjunction with a specified
9 culpable mental state, exemplary damages may be awarded only if
10 the claimant proves by clear and convincing evidence that the
11 damages result from the specified circumstances or culpable
12 mental state."

13 Section 11. A new Section 41-14-11 NMSA 1978 is enacted
14 to read:

15 "41-14-11. [NEW MATERIAL] EXEMPLARY DAMAGES--FACTORS
16 PRECLUDING RECOVERY.--

17 A. Exemplary damages may be awarded to a claimant
18 pursuant to the Professional Medical Liability Insurance Act
19 only if damages other than nominal damages are awarded, except
20 as provided in Subsection B of this section.

21 B. Exemplary damages shall not be awarded to a
22 claimant who elects to have the recovery awarded pursuant to
23 the Medical Liability Insurance Act increased due to an award
24 made pursuant to a provision of law not included in that act."

25 Section 12. A new Section 41-14-12 NMSA 1978 is enacted

.165651.1

underscoring material = new
[bracketed material] = delete

1 to read:

2 "41-14-12. [NEW MATERIAL] EXEMPLARY DAMAGES--AWARD
3 SPECIFIC TO DEFENDANT HEALTH CARE PROVIDER.--In an action on a
4 health care liability claim brought pursuant to the
5 Professional Medical Liability Insurance Act in which there are
6 two or more defendant health care providers, an award of
7 exemplary damages shall be specific as to a defendant health
8 care provider, and each defendant health care provider is
9 liable only for the amount of the award made against that
10 defendant."

11 Section 13. A new Section 41-14-13 NMSA 1978 is enacted
12 to read:

13 "41-14-13. [NEW MATERIAL] PREJUDGMENT INTEREST--UNIFORM
14 COMMERCIAL CODE PREJUDGMENT INTEREST PROVISIONS NOT
15 APPLICABLE.--Notwithstanding the provisions of Section 56-8-4
16 NMSA 1978, prejudgment interest shall not be assessed or
17 recovered on an award of exemplary damages."

18 Section 14. A new Section 41-14-14 NMSA 1978 is enacted
19 to read:

20 "41-14-14. [NEW MATERIAL] EXEMPLARY DAMAGES--FORMULA FOR
21 RECOVERY.--

22 A. In an action on a health care liability claim
23 pursuant to the Professional Medical Liability Insurance Act in
24 which a claimant seeks recovery of damages, the trier of fact
25 shall determine the amount of exemplary damages separately from

.165651.1

underscored material = new
[bracketed material] = delete

1 the amount of economic damages.

2 B. Exemplary damages awarded against a health care
3 provider may not exceed an amount equal to two times the amount
4 of economic damages, plus an amount equal to any noneconomic
5 damages awarded.

6 C. The provisions of this section may not be made
7 known to a jury by any means, including voir dire, introduction
8 into evidence, argument or instruction.

9 D. Persons claiming to have sustained damages as
10 the result of injury to or the death of a single person,
11 regardless of the theory of liability, are considered a single
12 claimant for purposes of the Professional Medical Liability
13 Insurance Act to which the formula for recovery of exemplary
14 damages set forth in this section shall apply."

15 Section 15. A new Section 41-14-15 NMSA 1978 is enacted
16 to read:

17 "41-14-15. [NEW MATERIAL] BIFURCATED TRIAL.--

18 A. On motion by a defendant, the court shall
19 provide for a bifurcated trial. A motion made pursuant to this
20 section shall be made prior to voir dire examination of the
21 jury or at a time specified by a pretrial court order issued
22 under Rule 1-016 of the New Mexico Rules of Civil Procedure.

23 B. In an action with more than one defendant health
24 care provider, the court shall provide for a bifurcated trial
25 on motion of any defendant health care provider.

.165651.1

underscored material = new
[bracketed material] = delete

1 C. In the first phase of a bifurcated trial, the
2 trier of fact shall determine:

3 (1) liability for compensatory and exemplary
4 damages; and

5 (2) the amount of compensatory damages,
6 including economic and non-economic damages.

7 D. If liability for exemplary damages is
8 established during the first phase of a bifurcated trial, the
9 trier of fact shall, in the second phase of the trial,
10 determine the amount of exemplary damages to be awarded, if
11 any."

12 Section 16. A new Section 41-14-16 NMSA 1978 is enacted
13 to read:

14 "41-14-16. [NEW MATERIAL] EXEMPLARY DAMAGES--
15 CONSIDERATIONS IN MAKING AWARD.--

16 A. Before making an award of exemplary damages, the
17 trier of fact shall review the definition of "exemplary
18 damages" and Sections 41-14-10 through 41-14-14 NMSA 1978
19 pertaining to awarding exemplary damages.

20 B. The trier of fact shall determine whether to
21 award exemplary damages and, if exemplary damages are to be
22 awarded, the amount of exemplary damages to award."

23 Section 17. A new Section 41-14-17 NMSA 1978 is enacted
24 to read:

25 "41-14-17. [NEW MATERIAL] EXEMPLARY DAMAGES--EVIDENCE

.165651.1

underscored material = new
[bracketed material] = delete

1 REQUIRED AS BASIS OF DETERMINATION OF AMOUNT OF AWARD--
2 INADMISSIBLE IN PHASE ONE OF TRIAL.--

3 A. In determining the amount of exemplary damages,
4 the trier of fact shall consider evidence, if any, relating to:

- 5 (1) the enormity and nature of the wrong;
- 6 (2) the character of the conduct involved;
- 7 (3) the reprehensibility of the defendant's
- 8 conduct; and

9 (4) aggravating and mitigating circumstances
10 as may be shown.

11 B. Evidence that is relevant only to the amount of
12 exemplary damages that may be awarded is not admissible during
13 the first phase of a bifurcated trial."

14 Section 18. A new Section 41-14-18 NMSA 1978 is enacted
15 to read:

16 "41-14-18. [NEW MATERIAL] JURY INSTRUCTIONS.--In a trial
17 to a jury, the court shall instruct the jury with regard to
18 Sections 41-14-10 through 41-14-12, 41-14-14 and 41-14-17 NMSA
19 1978."

20 Section 19. A new Section 41-14-19 NMSA 1978 is enacted
21 to read:

22 "41-14-19. [NEW MATERIAL] JUDICIAL REVIEW OF EXEMPLARY
23 DAMAGES AWARD.--

24 A. Except as provided in Subsection B of this
25 section, an appellate court that reviews the evidence with

underscored material = new
[bracketed material] = delete

1 respect to a finding by a trier of fact concerning liability
2 for exemplary damages or with respect to the amount of
3 exemplary damages awarded shall state, in a written opinion,
4 the court's reasons for upholding or disturbing the finding or
5 award. The written opinion shall address the evidence or lack
6 of evidence with specificity in terms of the requirements
7 relating to liability or exemplary damages of the Professional
8 Medical Liability Insurance Act.

9 B. This section does not apply to the supreme court
10 with respect to its consideration of an application for writ of
11 error."

12 Section 20. A new Section 41-14-20 NMSA 1978 is enacted
13 to read:

14 "41-14-20. [NEW MATERIAL] FINANCIAL RESPONSIBILITY.--

15 A. Beginning July 1, 2007, the limitations on
16 noneconomic and exemplary damages set forth in the Professional
17 Medical Liability Insurance Act shall apply to a health care
18 provider that provides evidence of financial responsibility in
19 effect for an act or omission to which that act applies in the
20 amount of at least two hundred fifty thousand dollars
21 (\$250,000) for each health care liability claim up to a maximum
22 of five hundred thousand dollars (\$500,000) in the aggregate
23 for all health care liability claims occurring in an insurance
24 policy year, calendar year or fiscal year.

25 B. Evidence of financial responsibility may be

.165651.1

underscored material = new
[bracketed material] = delete

1 established at the time of judgment by providing proof of:

2 (1) the purchase of a contract of insurance or
3 other plan of insurance authorized by this state or federal law
4 or regulation;

5 (2) the purchase of coverage from a trust
6 organized and operating under the laws of the state of New
7 Mexico;

8 (3) the purchase of coverage or another plan
9 of insurance provided by or through a risk retention group or
10 purchasing group authorized by:

11 (a) laws of New Mexico;

12 (b) the federal Product Liability Risk
13 Retention Act of 1981;

14 (c) the federal Liability Risk Retention
15 Act of 1986; or

16 (d) any other contract or arrangement
17 for transferring and distributing risk relating to legal
18 liability for damages, including cost or defense, legal costs,
19 fees and other claim expenses, including a captive insurance
20 company; or

21 (4) the maintenance of financial reserves in
22 or an irrevocable letter of credit from a federally insured
23 financial institution.

24 C. An officer, director, shareholder, member,
25 partner, manager, owner, parent, subsidiary, affiliate,

.165651.1

underscored material = new
[bracketed material] = delete

1 employee, independent contractor or agent of a health care
2 provider shall be deemed to have provided evidence of financial
3 responsibility conforming with this section, and shall be
4 subject to the limitations on damages set forth in the
5 Professional Medical Liability Insurance Act, if the health
6 care provider provides evidence of financial responsibility
7 that complies with this section.

8 D. Assuming that evidence of financial
9 responsibility is established by the time of judgment, the
10 limitations on noneconomic and exemplary damages set forth in
11 the Professional Medical Liability Insurance Act shall apply to
12 health care liability claims filed on or after July 1, 2007."

13 Section 21. A new Section 41-14-21 NMSA 1978 is enacted
14 to read:

15 "41-14-21. [NEW MATERIAL] PAYMENT FOR FUTURE LOSSES--
16 LIMITATION OF APPLICATION TO CERTAIN CLAIMS--PERIODIC
17 PAYMENTS.--In an action on a health care liability claim
18 against a health care provider in which the present value of
19 the award of future damages, as determined by the court, equals
20 or exceeds one hundred thousand dollars (\$100,000):

21 A. the court shall, at the request of a defendant
22 health care provider or claimant:

23 (1) order that medical, health care or
24 custodial services be paid in whole or in part in periodic
25 payments rather than by a lump-sum payment; and

.165651.1

underscored material = new
[bracketed material] = delete

1 (2) make a specific finding of the dollar
2 amount of periodic payments that will compensate the claimant
3 for the future damages;

4 B. the court may order that future damages other
5 than medical, health care or custodial services awarded be paid
6 in whole or in part in periodic payments rather than by a lump-
7 sum payment; and

8 C. the court shall specify in its judgment ordering
9 the payment of future damages by periodic payments the:

- 10 (1) recipient of the payments;
11 (2) dollar amount of the payments;
12 (3) interval between payments; and
13 (4) number of payments or the period of time
14 over which payments shall be made."

15 Section 22. A new Section 41-14-22 NMSA 1978 is enacted
16 to read:

17 "41-14-22. [NEW MATERIAL] RELEASE.--The entry of an order
18 for the payment of future damages by periodic payments
19 constitutes a release of the health care liability claim filed
20 by the claimant."

21 Section 23. A new Section 41-14-23 NMSA 1978 is enacted
22 to read:

23 "41-14-23. [NEW MATERIAL] FINANCIAL RESPONSIBILITY.--

24 A. As a condition to authorizing periodic payments
25 of future damages, the court shall require a defendant who is

.165651.1

underscored material = new
[bracketed material] = delete

1 not adequately insured to provide evidence of financial
2 responsibility in an amount adequate to ensure full payment of
3 damages awarded by a judgment issued pursuant to a health
4 liability claim brought pursuant to the Professional Medical
5 Liability Insurance Act.

6 B. The judgment shall provide for payments to be
7 funded by:

8 (1) an annuity contract issued by a company
9 licensed to do business as an insurance company, including an
10 assignment within the meaning of Section 130 of the Internal
11 Revenue Code of 1986;

12 (2) an obligation of the United States;

13 (3) applicable and collectible liability
14 insurance from one or more qualified insurers; or

15 (4) any other satisfactory form of funding
16 approved by the court.

17 C. On termination of periodic payments of future
18 damages, the court shall order the return of the security, or
19 as much as remains, to the defendant."

20 Section 24. A new Section 41-14-24 NMSA 1978 is enacted
21 to read:

22 "41-14-24. [NEW MATERIAL] DEATH OF RECIPIENT.--

23 A. On the death of the recipient, money damages
24 awarded for loss of future earnings continue to be paid to the
25 estate of the recipient of the award without reduction until

.165651.1

underscored material = new
[bracketed material] = delete

1 the award is fully satisfied.

2 B. Periodic payments, other than future loss of
3 earnings, terminate on the death of the recipient.

4 C. If the recipient of periodic payments dies
5 before all payments required by the judgment are paid, the
6 court may modify the judgment to award and apportion the unpaid
7 damages for future loss of earnings in an appropriate manner.

8 D. Following the satisfaction or termination of
9 obligations specified in the judgment for periodic payments,
10 any obligation of the defendant health care provider to make
11 further payments ends and any security given reverts to the
12 defendant."

13 Section 25. Section 41-2-3 NMSA 1978 (being Laws 1882,
14 Chapter 61, Section 3, as amended) is amended to read:

15 "41-2-3. PERSONAL REPRESENTATIVE TO BRING ACTION--
16 DAMAGES--DISTRIBUTION OF PROCEEDS.--Every action mentioned in
17 Section 41-2-1 NMSA 1978 shall be brought by and in the name of
18 the personal representative of the deceased person, and the
19 jury in every such action may give [~~such~~] damages, compensatory
20 and exemplary, as they deem fair and just, taking into
21 consideration the pecuniary injury resulting from the death to
22 the surviving party entitled to the judgment, or any interest
23 in the judgment, recovered in such action and also having
24 regard to the mitigating or aggravating circumstances attending
25 the wrongful act, neglect or default. An award of damages,

.165651.1

underscored material = new
[bracketed material] = delete

1 compensatory or exemplary, made pursuant to this section shall
2 be in accordance with the provisions of Chapter 41, Article 5
3 NMSA 1978 and Chapter 41, Article 14 NMSA 1978. The proceeds
4 of [~~any~~] a judgment obtained in [~~any such~~] an action shall not
5 be liable for [~~any~~] a debt of the deceased; provided the
6 decedent has left a spouse, child, father, mother, brother,
7 sister or child or children of the deceased child, as defined
8 in the [~~New Mexico~~] Uniform Probate Code, but shall be
9 distributed as follows:

10 A. if there is a surviving spouse and no child,
11 then to the spouse;

12 B. if there is a surviving spouse and a child or
13 grandchild, then one-half to the surviving spouse and the
14 remaining one-half to the children and grandchildren,
15 the grandchildren taking by right of representation;

16 C. if there is no husband or wife, but a child or
17 grandchild, then to such child and grandchild by right of
18 representation;

19 D. if the deceased is a minor, childless and
20 unmarried, then to the father and mother who shall have an
21 equal interest in the judgment, or if either of them is dead,
22 then to the survivor;

23 E. if there is no father, mother, husband, wife,
24 child or grandchild, then to a surviving brother or sister if
25 there are any; and

.165651.1

underscored material = new
[bracketed material] = delete

1 F. if there is no kindred as named in Subsections A
2 through E of this section, then the proceeds of the judgment
3 shall be disposed of in the manner authorized by law for the
4 disposition of the personal property of deceased persons."

5 Section 26. Section 57-15-10 NMSA 1978 (being Laws 1965,
6 Chapter 79, Section 7) is amended to read:

7 "57-15-10. EXCEPTIONS.--Nothing in [~~this~~] Chapter 57,
8 Article 15 NMSA 1978 shall apply to [~~any~~]:

9 A. a television or sound radio broadcasting station
10 or to [~~any~~] a publisher or printer of a newspaper, magazine or
11 other form of printed advertising [~~who~~] that broadcasts,
12 publishes or prints such advertisement; or

13 B. a health care provider as defined in the
14 Professional Medical Liability Insurance Act with respect to
15 claims for damages for personal injury or death resulting, or
16 allowed to result, from conduct on the part of a health care
17 provider."

18 Section 27. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2007.