IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

KATHERINE FERLIC, as the Personal Representative of the Estate of PAMELA SMITH, deceased,

Plaintiff-Respondent,

v.

LOVELACE HEALTH SYSTEM, LLC, a New Mexico limited liability company, d/b/a Lovelace Medical Center, d/b/a Lovelace Medical Group;

Defendant-Petitioner,

~ and ~

AHS MANAGEMENT COMPANY, INC., a Tennessee corporation,

Defendant.

No. S-1-SC-40580
No. A-1-CA-41966
No. D-101-CV-2022-01148

REPLY BRIEF OF PETITIONER LOVELACE HEALTH SYSTEM, LLC

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 12-318(G) NMRA, undersigned counsel certifies that this Reply Brief complies with the limitations and requirements set forth in Rule 12-318(F)(3) NMRA and is printed in Times New Roman, 14-point type, and contains 4,383 words. This brief was prepared and the word count determined using Microsoft Word 2010.

CITATIONS TO RECORD PROPER AND TRANSCRIPTS

The record proper is cited in this Reply Brief as "RP (page #)." The hearing transcripts are cited as "Tr. (hearing date), (page:line)." Citations to any digitally recorded transcripts of proceedings are to the date of the proceedings and the time stamp provided by the FTR software.

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INTRODUCTION

The MMA is remedial legislation that is critical to the viability of New Mexico's health care system. Recent efforts by litigants to circumvent the benefits and protections the MMA affords to QHPs pose an existential threat to that system. Plaintiff's arguments are representative of that phenomenon. Although the issues certified by the Court are of substantial public importance, the proper resolution of them is straightforward.

Plaintiff sued Lovelace for malpractice on grounds that it is vicariously liable for the alleged negligence of its employed registered nurses. Because Lovelace is a QHP under the MMA, it is entitled to the MMA's protections, including a limit on compensatory damages that may be awarded against it pursuant to "any cause of action" for malpractice. NMSA 1978, §§ 41-5-3(A)&(C), and 41-5-6. Plaintiff seeks to divest Lovelace of these protections on the theory that vicarious liability claims against a QHP-hospital fall outside the MMA's scope, unless the employees whose conduct is at issue are themselves QHPs. AB 19 ("If the active tortfeasor is not a [QHP], then the hospital ... is not entitled to the benefits of the Act."). The district court erred in adopting Plaintiff's theory.

Nothing in the MMA's express language or remedial purpose supports the exclusion of vicarious liability claims against QHP-employers. To the contrary, the MMA contemplates that claims may be brought against QHP-employers under the doctrine of respondeat superior, and this Court has recognized that "the Legislature

intended that medical malpractice claims made against [] employer[s] under the doctrine of respondeat superior be brought under the Act." *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 39, 309 P.3d 1047. The Court's recognition of this principle is both necessary and unremarkable, as entities "cannot practice medicine, diagnose an illness, or prescribe a course of treatment" to their patients. *Reynolds v. Swigert*, 1984-NMCA-086, ¶ 17, 697 P.2d 504. Rather, they may only commit malpractice through their officers, employees, and agents. UJI 13-409 NMRA ("A corporation can act only through its officers and employees."); *see also* UJI 13-1120A NMRA ("A hospital is responsible for injuries proximately resulting from the negligence of its employees"). Given those immutable facts, the exclusion of vicarious liability claims against QHP-employers, in whole or in part, would render the MMA's protections for hospitals illusory. The Court should not countenance such an absurd result. By encouraging hospitals to become QHPs, and by extending the MMA to "any cause of action" for malpractice, the Legislature made clear that all malpractice claims against qualifying hospitals fall within the MMA's scope, including vicarious liability claims.

Nor is there any basis to conclude that a QHP-employer's entitlement to the MMA's benefits and protections is contingent upon the independent QHP status of its individual employees, as Plaintiff has argued. Adoption of this approach would eviscerate the MMA as it would enable patients to "circumvent the provisions that

the Legislature intended to benefit" QHPs such as Lovelace by targeting non-QHP employees. *Baker*, 2013-NMSC-043, ¶ 35. Permitting manipulation of vicarious liability claims to permit an "end run around" the MMA, and thereby "effectively divest[ing]" QHPs from the MMA's protection," would be inconsistent with the Legislature's purpose for enacting the MMA. *Id.*, ¶¶ 15, 35. Contrary to Plaintiff's position, the Legislature intended to preclude clever litigation tactics and to protect hospitals as institutions that provide comprehensive health care services through their employees, not merely to provide redundant coverage for those employees who are themselves QHPs. *Id.*, ¶ 31 (rejecting an approach that would require "redundant" QHP-certification of both medical organizations and the individual professionals they employ).

Hospitals employ many individuals who are not expressly or independently eligible to become QHPs, such as registered nurses, but whose work enables hospitals to provide a full range of medical services to their patients. As a matter of respondeat superior, any act or omission of a hospital employee within the scope of her/his employment is attributable to the hospital. Indeed, as this Court explained in *Baker*, "'**the employer and the employee are treated as one entity** for purposes of assigning liability'" under that doctrine. *Id.*, ¶ 32 (quoting Restatement (Third) of Torts: Apportionment of Liability § 7 cmt. j (2000)) (emphasis added). Accordingly, all employed medical providers of QHP-hospitals should be covered by the MMA.

Failure to recognize this rule would "conflict[] with the doctrine of respondeat superior language as it is used in the MMA." *Id.*, ¶ 33. And practically speaking, it would expose hospital employees to unlimited liability, increase the burden and expense of delivering medical care to New Mexicans, and inhibit hospitals from hiring critically important medical providers such as nurses. Curtailing the ability of hospitals and their employees to participate in the MMA would disincentivize them from providing medical care. This is manifestly inconsistent with the MMA's remedial purpose and design.

QUESTIONS PRESENTED

This Court certified two questions for consideration on Lovelace's appeal; specifically:

1. Is a hospital that is a QHP under the MMA entitled to the MMA's protections with respect to medical malpractice claims seeking to hold it vicariously liable for the for the conduct of its non-QHP employed registered nurses?

2. Is an individual healthcare provider whose scope of practice is not listed in the MMA as eligible to become a QHP, but who is employed by a QHP-hospital, entitled to the MMA's protections?

Despite the Court's certification order, Plaintiff attempts to reframe the issues in her answer brief. AB 3. Not only is Plaintiff's attempt substantively and procedurally improper, but her reframed issues materially depart from the trial

court's summary judgment decision. "Under the appellate rules, it is improper for this Court to consider any questions except those set forth in the petition for certiorari." *Fikes v. Furst*, 2003-NMSC-033, ¶ 8, 81 P.3d 545. The questions presented in Lovelace's petition for writ of certiorari, as more fully addressed in its brief in chief, accurately describe the issues of substantial public interest that should be resolved by this Court.

BACKGROUND

As described in the brief in chief, Plaintiff has advanced a medical malpractice claim against Lovelace based upon the allegedly negligent conduct of its employed registered nurses on a theory of respondeat superior. BIC 5. This is the background information that is relevant to the decision rendered below and the issues properly before the Court on appeal.

The answer brief elaborates upon Plaintiff's malpractice claim in various and unnecessary ways. AB 1, 3-5, 27. Lovelace disputes significant aspects of Plaintiff's version of the events. RP 50-56. Insofar as the underlying disposition was rendered on Plaintiff's motion for summary judgment, Plaintiff's self-serving description of the disputed facts should not be entertained on appeal. *Romero v. Philip Morris Inc.*, 2010-NMSC-035, ¶ 7, 242 P.3d 280. Plaintiff also attempts to inject a variety of inaccurate, irrelevant, and inflammatory assertions relative to Lovelace's corporate status. AB 1, 2, 22. Lovelace is not a "publicly traded out-of-state healthcare

corporation owned largely by private equity investors," nor does Pure Health own any membership interest in it. AB 1. As may be readily confirmed by searching the New Mexico Secretary of State's website, Lovelace is and has been a domestic limited liability company since December 31, 2018. Plaintiff's attempt to prejudice the Court against Lovelace in this fashion is highly improper and should be roundly rejected.

STANDARD OF REVIEW

The propriety of an award of summary judgment is reviewed de novo. *See Montgomery v. Lomos Altos, Inc.*, 2007-NMSC-002, ¶ 16, 150 P.3d 971 ("An appeal from the grant of a motion for summary judgment presents a question of law and is reviewed *de novo*."). Similarly, the certified issues present questions of law, which are also subject to de novo review. *See Baker*, 2013-NMSC-043, ¶ 10 (the question of whether the Legislature intended for certain defendants to be eligible to receive the benefits of the MMA "presents an issue of statutory construction, which is a question of law that this Court reviews de novo").

Plaintiff contends that the MMA should be "strictly construed" as a statute in derogation of the common law. AB 8, 32. This is inaccurate. "Where a statute is both remedial and in derogation of the common law, it is usual to construe strictly the question of whether it does modify the common law, but its application should be liberally construed." *Albuquerque Hilton Inn v. Haley*, 1977-NMSC-051, ¶ 7, 565

P.2d 1027). Because the MMA is a remedial statute, its application should be liberally construed. *See, e.g., Leger v. Leger*, 2022-NMSC-007, ¶ 47 fn. 3, 503 P.3d 349 (characterizing medical malpractice statutes, including the MMA, as remedial legislation). As in other MMA cases, this principle should guide the Court's approach to resolving the questions presented on appeal.

ARGUMENT

The answer brief advances five arguments, which roughly correlate with the issues as restated by Plaintiff. AB 3, 7-32. Lovelace will sequentially address Plaintiff's arguments.

A. The MMA's "plain language" does not exclude "nursing conduct" from its scope and purview

Plaintiff contends that the MMA excludes "nursing conduct" from its scope. AB 7-11. Insofar as the statutory definition of "health care provider" does not mention "registered nurses," *see* NMSA 1978, § 41-5-3, Plaintiff contends that they cannot become QHPs under the MMA. AB 9-10; *see* NMSA 1978, § 41-5-5(A) (describing QHP criteria). To the extent that registered nurses cannot become QHPs, Plaintiff claims the MMA's provisions cannot benefit them. AB 9; *see* NMSA 1978, § 41-5-5(C) ("A health care provider not qualifying under this section shall not have the benefit of any of the provisions of the [MMA]"). Plaintiff further contends that the definition of "malpractice claim," to include "any cause of action arising … against a health care provider[,]" NMSA 1978, § 41-5-3, purportedly underscores

the MMA's inapplicability to malpractice claims arising from the alleged negligence of registered nurses. AB 10.

Plaintiff's argument is untethered from this malpractice lawsuit. Plaintiff has not sued any registered nurses but has instead sued Lovelace for their alleged negligence under a theory of respondeat superior. RP 1-17 (Complaint); RP 19-35 (First Amended Complaint). Nowhere in her summary judgment motion or in her answer brief has Plaintiff challenged Lovelace's QHP status. Plaintiff's silence stems from the facts that Lovelace, as a "hospital," meets the MMA's definition of "health care provider" and has satisfied its financial responsibility requirements. *See, respectively,* NMSA 1978, § 41-5-3 (listing "hospital" as a "health care provider"); NMSA 1978, § 41-5-5 (A)&(B) (listing a hospital's financial responsibility requirements). Accordingly, Lovelace is entitled to the "benefit of ... the provisions of the MMA ... [with respect to Plaintiff's] malpractice claim[s] against it." NMSA 1978, § 41-5-5(C).

Plaintiff's argument is also premised upon an impermissibly narrow and wooden reading of the MMA's "plain language." Over twelve years ago, *Baker* rejected the argument (yet still advanced by Plaintiff in her answer brief) that the defined phrase "health care provider" excludes any and all medical practitioners and entities not listed therein. 2013-NMSC-043, ¶ 23. The Court found that definition to be ambiguous. *Id.*, ¶¶ 15, 22. To vindicate the MMA's purpose and avoid an absurd

result, the Court resolved that ambiguity in favor of broad applicability to the unlisted defendants. *Id.*

To the extent that Plaintiff's claims against Lovelace implicate the MMA's applicability to registered nurses who are employed by QHPs, *Baker*'s liberal, purpose-driven approach is warranted. In *Baker*, the Court observed that leaving medical providers exposed to liability "acts as a disincentive to practice medicine at all, which is exactly what the Legislature was trying to address by incentivizing participation in the MMA." *Id.*, ¶ 21. Recognizing that the Legislature's goal was "to assure that providers of health care are adequately covered in New Mexico[,]" the Court refused to strictly construe the MMA's language as doing so would defeat its intended purpose. *Id.*; *see also Wilschinsky v. Medina*, 1989-NMSC-047, 775 P.2d 713 (holding that non-patient's claims arising from an auto accident were governed by the MMA even though "malpractice claim" relates to "injury to the patient, whether the patient's claim or cause of action sounds in tort or contract"); *Christus St. Vincent Reg'l Med. Ctr. v. Duarte-Afara*, 2011-NMCA-112, 692 P.3d 1007 (applying MMA to hospital's indemnity claim against medical doctor). A similar approach is warranted here.

Nor is there any basis for Plaintiff's assertion that the MMA's legislative history supports the exclusion of "nursing conduct," AB 11-14, and that the 2021 amendments to the MMA confirm that "nursing conduct" previously fell outside its

scope. AB 14-19. "Nursing conduct" is not addressed in either the MMA's legislative history or its language. Rather, the MMA applies to qualifying providers with respect to malpractice claims. NMSA 1978, §§ 41-5-3, 41-5-5 (A)-(C). In turn, the MMA defines "malpractice claims" to include "any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care which proximately results in injury to the patient[.]" NMSA 1978, § 41-5-3. Unlike ambulances, *see id.,* there is no exclusion for "nursing conduct" in the MMA.

In her effort to supply the "missing" language, Plaintiff suggests that "[t]he history surrounding nurses' attempts to become [QHPs] under the Act, and the Legislature's continual rejection of those efforts until the definition of a hospital was changed under the 2021 amendments, demonstrates that nursing conduct taking place before the amendments went into effect ... is not subject to the benefits and protections of the Act." AB 13. Plaintiff also suggests that "the Legislature's specific decision not to extend the protections of the [MMA] to claims of vicarious liability against qualified health care providers" similarly establishes that the MMA does not apply. *Id.*

Lovelace submits that the legislative history Plaintiff draws upon supports a diametrically opposing perspective. As noted, Plaintiff's argument is untethered from this lawsuit, as she has not sued any registered nurses who are practicing

independently (if that were possible), but has instead sued Lovelace for their alleged negligence. Moreover, Lovelace submits that the Legislature did not see fit to amend the MMA to expressly include nurses and nursing conduct because it has been understood, at least since *Baker*, that respondeat superior claims against QHP-employers fall within the MMA's scope. Once the *Baker* rule was codified in the MMA, there was no need to separately address vicarious liability claims; it is captured in the term "hospital."

Upon review of the history of many of the medical providers not listed in the original MMA and thereafter, it is clear that the Legislature did not intend to exclude such providers or their conduct. When originally enacted, the MMA did not categorically exclude nurses since they practiced under physicians. Since then, the Legislature has recognized certain types of nurses (*e.g.*, nurse practitioners) as separately licensed providers authorized to engage in independent primary practice. *See* 1991 N.M. Laws, ch. 190 §§ 1, 14(B), (F). Should such nurses elect to practice independently, they would need to satisfy the MMA's financial responsibility requirements before they could receive its protection. Insofar as other types of nurses (*e.g.*, registered nurses) have not furnished medical services as independent providers, but rather as employees, there has been no need to amend the MMA to address them. However, recent litigation in various district courts throughout the State briefly created confusion and disagreement on this matter. AB 32-35. This is

what prompted the Legislature to adopt "clarifying" amendments. *See, e.g.,* NMSA 1978, § 41-5-3(D) (2021); 41-5-3(E) (2023) (clarifying that "hospital" includes "employees"). This history does not reflect prior, categorical exclusion of nurses or "nursing conduct" from the MMA's scope; quite the opposite.

B. The MMA's applicability to QHPs is not controlled by the QHP status of the "active tortfeasor"

Plaintiff next contends that the QHP-status of the "active tortfeasor" should control the MMA's applicability. AB 19-25, 26. Plaintiff's misguided argument is premised upon a portion of *Baker* discussing the MMA's reference to "professional services" within the definition of "health care provider." 2013-NMSC-043, ¶¶ 22-31. Plaintiff suggests that *Baker*'s focus upon "the licensure or certification of the *individual*" supports her position. AB 1, 19. But that observation was responsive to an argument that the Legislature did not intend to cover business entities unlicensed to provide health care or professional services. *Id.*, ¶ 30. This Court refused to "parse the Legislature's words" in the "literal and mechanical manner" suggested and thus concluded that the reference to licensure concerned individual medical professionals, rather than business organizations. *Id.*

Similarly, *Baker*'s isolated reference to "active" and "passive" tortfeasors is contextually limited. The object of those references was to clarify that, in view of the doctrine of respondeat superior, unlisted medical organizations under which professionals operate "are eligible to become QHPs under the MMA as long as they

employ or consist of members who are licensed and certified by the State" as medical professionals listed in Section 41-5-3(A). *Id.*, ¶ 30. Insofar as Plaintiff's malpractice claims have been brought against a QHP-hospital like Lovelace, rather than an unlisted business entity as in *Baker*, the MMA's applicability is clear. The portion of the *Baker* decision upon which Plaintiff relies (concerning licensure, certification, and professional services) is immaterial to this appeal.

C. Curtailing the MMA's applicability to certain vicarious liability claims against QHP-hospitals would render the MMA illusory

Plaintiff next disputes Lovelace's contention that the exclusion of vicarious liability claims premised upon the alleged negligence of non-QHP employees would eviscerate the protections extended to QHP-hospitals under the MMA. AB 25-28. To that end, Plaintiff argues that the MMA supplies benefits to QHP-hospitals with respect to "direct claims" against them, as opposed to vicarious liability claims premised upon the conduct of an "active tortfeasor." *Id.* (failing to cite any record evidence).

Plaintiff's unsupported suggestion is inaccurate and untenable. As noted, Plaintiff's reliance upon an "active tortfeasor" paradigm is misplaced. Moreover, the MMA applies with respect to "malpractice claims," defined to include "**any cause of action** ... against a health care provider for medical treatment, lack of medical treatment or other departure from accepted standards of health care[.]" NMSA 1978, § 41-5-3 (emphasis added). Given that a hospital cannot practice medicine, it is

apparent that a hospital cannot commit malpractice; only its employees can. Accordingly, malpractice claims against hospitals necessarily entail vicarious liability, as opposed to "direct liability" claims.

The scenarios offered by Plaintiff illustrate the point. AB 25-28. For example, Plaintiff contends that Lovelace's "policy" of giving PACU nurses discretion with respect to range orders would be classifiable as a "malpractice claim" insofar as it rests on an alleged deviation from "accepted standards of health care." NMSA 1978, § 41-5-3. But any such policy could only have been adopted and implemented by Lovelace's employees. UJI 13-409 NMRA. Thus, such a scenario would not imply a "direct claim" against Lovelace, but rather a claim premised upon the conduct of its employees. UJI 13-1120A. Similarly, Plaintiff's contention that Lovelace would be covered by the MMA for its alleged "decision to use out-of-date monitors in its PACU that did not monitor patients' respiratory rates" is misguided. In addition to being factually inaccurate, it once again overlooks the fact that Lovelace's "conduct" would be coterminous with that of its employees, such that a malpractice claim would entail respondeat superior liability. And, to the extent that the subject employees are not QHPs, under Plaintiff's theory Lovelace would not be entitled to the MMA's protections with respect to those claims.

Plaintiff's argument is even more facetious when juxtaposed with the other claims she has asserted in this lawsuit. In her complaint, Plaintiff has asserted a litany

of claims that she errantly contends are outside the MMA's purview because they are subject to an "ordinary care" standard. RP 19-35; RP 30 (alleging Lovelace "had a duty to exercise ordinary care in the ownership, administration, management, and operation" of the hospital); RP 33 (UPA). Plaintiff references the "out-of-date" PACU monitors in those claims. *Id.* And, in motions practice, Plaintiff has challenged Lovelace's position that, regardless of whether those claims are subject to an ordinary care standard or require expert testimony, the MMA still applies because of a "malpractice claim's" sheer breadth. RP 2274-2309 (Plaintiff's UPA Response). It is disingenuous for Plaintiff to claim hospitals "benefit greatly" from their QHP status when she disputes the MMA's applicability to all manner of claims involving medical care.

Contrary to Plaintiff's unsupported assertion, Lovelace's position will not expand the MMA beyond its intended purview or force the PCF into insolvency. AB 28. To the contrary, as a duly admitted QHP, Lovelace simply seeks the benefits and protections afforded to it. Conversely, under Plaintiff's theory, creative litigants could avoid the MMA's application merely by alleging the negligence of employees lacking independent QHP-status in nearly any malpractice scenario. Lovelace maintains that adoption of Plaintiff's theory would eviscerate the MMA's protections extended to QHP-hospitals, which is contrary to the MMA's remedial purpose.

D. Applying the MMA to Plaintiff's vicarious liability claims is contemplated by the MMA and will not compromise the PCF

Plaintiff next argues that applying the MMA to respondeat superior claims such as hers would undermine the PCF's stability and solvency. AB 22-24, 28-31. Plaintiff's unsupported position rests on the assumption that the MMA applies only to vicarious liability claims premised upon the conduct of employed providers listed in Section 41-5-3 and "for which [employers] must pay the independent provider surcharge." AB 29. Plaintiff further assumes that "surcharges were not calculated in amounts sufficient to cover the negligence of non-qualified health care providers like nurses." AB 22-23. Plaintiff then argues that "[t]o impose a financial burden on the PCF for vicarious liability claims when the acts and omissions of the providers involved were neither assessed for risk, nor calculated into the PCF surcharge, would constitute a drain on the PCF" which Plaintiff characterizes as improper. AB 30-31. In light of these assumptions, Plaintiff theorizes that "it would be a misuse of [QHP] funds to pay for harm caused by non-[QHPs]" such as nurses employed by QHP-hospitals. AB 23, 31.

The assumptions upon which Plaintiff's argument is premised are false, and were neither presented in nor substantiated by her summary judgment motion. RP 111-171. In fact, under the MMA, both the risk assessments conducted with respect to QHP-hospitals and the surcharges they pay are premised upon the evaluation of information detailing all manner of employees, including registered nurses and other

health care professionals not specifically listed in Section 41-5-3. Accordingly, her argument should be rejected.

In a transparent effort to avoid her summary judgment burden and the MMA's express requirements concerning risk assessments and actuarial analyses pertaining to QHP-hospitals, Plaintiff contends that Lovelace did not present evidence showing that the risk assessment and surcharge took nursing staff into consideration. AB 30. To the contrary, Plaintiff's own failure to timely advance and substantiate her position on these issues is fatal to her argument. Rule 1-056 NMRA. Moreover, in those cases where plaintiffs have challenged Lovelace's *compliance* with the MMA's risk assessment and actuarial requirements, Lovelace has demonstrated that those items and the resulting surcharge account for nursing staff and conduct. *See, e.g.,* Lovelace's Response Brief, filed 3/6/2025, in *Kristina Martinez et al. v. Lovelace Health System, LLC et al.*, No. D-101-CV-2022-02402 (attaching Lovelace's PCF application, which shows that nursing conduct is considered in the QHP process). Because Plaintiff has falsely asserted that "the acts and omissions of the providers involved were neither assessed for risk, nor calculated into the PCF surcharge," AB 31, the Court should take judicial notice of Lovelace's application should it elect to address Plaintiff's unpreserved and unsubstantiated argument. *Silva v. Am. Fedn. of State, County & Municipal Emples.*, 2001-NMSC-038, ¶ 18, 37 P.3d 81 (taking judicial notice of court records from another lawsuit).

E. The Court, as the final arbiter of New Mexico law, should decide the issues presented on a de novo standard and without deference to the trial courts' competing decisions

Finally, Plaintiff urges the Court to adopt the "uniform interpretation of the MMA" (AB 36) that has purportedly been taken by "district courts around the state [which] have consistently ruled for years that nursing conduct does not fall within the MMA, and that hospitals' vicarious liability for the negligence of their nurses is not subject to the benefits of the Act." AB 2. Initially, Plaintiff is wrong to suggest that the trial courts have adopted a "uniform interpretation of the MMA" on this issue. RP 174-196 (Lovelace's Response to Plaintiff's Motion for Partial Summary Judgment, filed 3/20/2023, attaching the Hon. Manuel I. Arrieta's contrary order in *Joe Michael Granie et al. v. Fernando Atilio Ravessoud MD et al.*, Case No. D-307-CV-2021-01296); RP 505-556 (Lovelace's Motion to Certify for Interlocutory Appeal, filed 12/11/2023, attaching the Hon. Francis Mathew's contrary order in *Miquaela Martinez v. St. Vincent Hospital*, D-101-CV-2018-01078). Moreover, as noted, to the extent that recent litigation led to disparate outcomes, the Legislature promptly amended the MMA to clarify that the term "hospital" includes its employees. *See* NMSA 1978, § 41-5-3(D) (2021); 41-5-3(E) (2023). As elaborated upon in the brief in chief, in view of this clarification, recognition of the MMA's applicability to vicarious liability claims brought against QHP-hospitals based upon the alleged negligence of employed registered nurses is consistent with the

Legislature's current and historical intent. BIC 26-31. This provides clear and substantial guidance with respect to the most appropriate resolution of the QHP issues presented on appeal.

Ultimately, Lovelace reiterates that the MMA was enacted to promote the health and welfare of the people of New Mexico by maintaining "a viable system of medical care and claim resolution." *McAneny v. Catechis*, 2023-NMCA-055, ¶ 12, 534 P.3d 1007. Participating health care providers, including both individual medical professionals and health care organizations such as hospitals, rely on the MMA's benefits and protections. Absent those protections, there is a powerful disincentive to furnishing services at all. Accordingly, undermining the protections supplied by the MMA, as Plaintiff is attempting to do, would imperil New Mexico's health care system, to the detriment of the people of this state. To avoid this result, Lovelace urges the Court to reject Plaintiff's position and apply the MMA to achieve its intended purposes.

CONCLUSION

For all of the reasons stated, Lovelace respectfully requests that the Court reverse the district court's decision, hold that QHP-hospitals are entitled to the MMA's benefits for claims arising from the alleged negligence of their employed nurses, and hold that employees of QHP-hospitals are likewise entitled to the MMA's protections.

Dated: April 7, 2025.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2025, I filed this **REPLY BRIEF** through the Court's Odyssey Filing System, which caused all counsel of record to be served electronically.

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