



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

TODD LOPEZ, as Personal Representative
of the Wrongful Death Estate of Richard Paiz
and LORETTA PAIZ, individually,

Plaintiffs-Respondents,

vs.

No. S-1-SC-40416

PRESBYTERIAN HEALTHCARE SERVICES,
HOSPITALIST MEDICINE PHYSICIANS OF
TEXAS, PLLC d/b/a/ SOUND PHYSICIANS
HOLDINGS, LLC, KENNETH DALE, and
KARAN MAHAJAN,

Defendants-Petitioners,

**DEFENDANTS-PETITIONERS HOSPITALIST MEDICINE PHYSICIANS
OF TEXAS, PLLC d/b/a SOUND PHYSICIANS HOLDINGS, LLC AND
KARAN MAHAJAN, M.D.'S REPLY BRIEF**

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STATEMENT REGARDING TRANSCRIPT OF PROCEEDINGS

Pursuant to Rule 12-318(A)(1)(b) NMRA, references to the digitally-recorded transcript are noted by date of the proceedings and the time stamp(s) provided by the FTR software.

STATEMENT OF COMPLIANCE

As required by Rule 12-318(G) NMRA, I hereby certify that this brief complies with the type-volume limitation of Rule 12-318(F)(3) NMRA. The brief was prepared using Times New Roman 14-point print. According to Microsoft 365 Apps for Business, the body of this Reply Brief contains 4,106 words.

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Defendants-Petitioners Hospitalist Medicine Physicians of Texas, PLLC d/b/a Sound Physicians of New Mexico II, LLC and Karan Mahajan, M.D. (collectively “Sound Physicians”), by and through their counsel of record, Miller Stratvert, P.A. (Jennifer D. Hall and Kelsey D. Green), hereby reply in support of their Brief-in-Chief, filed September 3, 2024, and respectfully request that this Court reverse the Court of Appeals’ decision reversing the District Court’s dismissal of Plaintiffs’ claims brought pursuant to the Wrongful Death Act (“WDA”), NMSA 1978, §§ 41-2-1 to -4 (1882, as amended through 2001), for want of subject matter jurisdiction. *See Lopez v. Presbyterian Health Servs.*, 2024-NMCA-055, 553 P.3d 481. The District Court is properly affirmed for the reasons set forth in Sound Physicians’ Brief-in-Chief.

Plaintiffs-Respondents Todd Lopez, as Personal Representative (“PR”) of the Wrongful Death Estate of Richard Paiz and Loretta Paiz, individually (“Plaintiffs”), have filed an Answer Brief that is non-responsive to the arguments presented by Sound Physicians in its Brief-in-Chief and essentially asks this Court to reverse the Court of Appeals’ reasoning but not its outcome. [*See, generally* AB] Sound Physicians first note that Plaintiffs continue to misstate that this case presents the question of whether a district court has subject matter jurisdiction over a wrongful death action pursuant to the WDA when a party fails to *secure* appointment of a PR. [*Id.* 1] This has never been the question before any Court. [*See, e.g.* 3 RP 566-83;

Plaintiffs’ Ct. App. BIC, filed October 23, 2023; Sound Physicians’ Ct. App. AB, filed December 7, 2023] The question presented asked the Court of Appeals to determine whether a district court lacks subject matter jurisdiction in an action brought pursuant to the WDA when a plaintiff fails to timely *seek* appointment of a PR under Rule 1-017(B) NMRA. [*See id.*] *See Lopez*, 2024-NMCA-055, ¶ 1.

In their Answer Brief, Plaintiffs ask this Court to affirm the Court of Appeals’ conclusion that the District Court’s dismissal was improper, but seemingly ask this Court to ignore the Court of Appeals’ reasoning. Indeed, Plaintiffs do not appear to respond to or contest any of Sound Physicians’ arguments in its Brief-in-Chief as to the Court of Appeals’ opinion. Sound Physicians asserted that the Court of Appeals’ opinion did not follow the analysis our appellate courts have consistently applied to determine standing for a statutory cause of action, that is, the analysis grounds itself in the express statutory language to determine who has standing to proceed with a legislatively-created cause of action. *See, e.g., San Juan Agric. Water Users Ass’n v. KNME-TV*, 2011-NMSC-011, 150 N.M. 64, 257 P.3d 884; *Disabled Am. Veterans v. Lakeside Veterans Club, Inc.*, 2011-NMCA-099, 150 N.M. 569, 263 P.3d 911; *French-Hesch v. French-Williams*, 2010-NMCA-008, 147 N.M. 620, 277 P.3d 110; *Prot. & Advocacy Sys., Inc. v. Presbyterian Healthcare Servs.*, 1999-NMCA-122, 128 N.M. 73, 989 P.2d 880. The Court of Appeals in contrast applied the analysis set out in *Gandydancer, LLC v. RockHouse CGM, LLC*, 2019-NMSC-021, 453 P.3d

434, to evaluate whether a statute or statutory scheme contemplated a certain cause of action to determine who had standing under the WDA to pursue a wrongful death cause of action.

Instead of arguing in support of the Court of Appeals' reasoning based on *Gandydancer, LLC*, Plaintiffs suggest this Court has three (3) options:

(1) to uphold the Court of Appeals' holding that the WDA is a statutory cause of action but to reverse the Court of Appeals' holding that the appointment of the PR is not jurisdictional, thereby overruling *Chavez* and its progeny, thereby affirming the [D]istrict [C]ourt; (2) to reverse the Court of Appeals' holding that the WDA is a statutory cause of action, thereby removing the WDA from the category of cases in which the issue of standing is interwoven with the issue of subject-matter jurisdiction, thereby reversing the [D]istrict [C]ourt on other grounds; or (3) to uphold the Court of Appeals' holding that the WDA is a statutory cause of action but otherwise to modify or overrule this Court's standing as jurisdictional prerequisite line of cases, thereby reversing the [D]istrict [C]ourt on other grounds.

[AB 3-4 (internal quotation marks omitted)] As to the first option, Sound Physicians ask this Court to reverse the Court of Appeals and affirm the District Court. Sound Physicians has never asked that any Court overrule *Chavez v. Regents of the University of New Mexico*, 1985-NMSC-114, 103 N.M. 606, 711 P.2d 883. Sound Physicians has always argued that *Deutsche Bank National Trust Co. v. Johnston*, 2016-NMSC-013, 369 P.3d 1046, filed by this Court some thirty (30) years after *Chavez*, simply clarified and/or superseded *Chavez's* conclusion. The

Court in *Chavez* did not engage in any jurisdictional analysis as to the New Mexico Constitution or statutory causes of action.

Plaintiffs' second option resurrects the question of whether the WDA is a statutory cause of action and part of the "special cases and proceedings" governed by the New Mexico Constitution Article VI, Section 13. Plaintiffs urge reversal of the Court of Appeals on that basis because that conclusion precludes the necessity of examining the jurisdictional question presented. [*See id.* 4-15] And while Plaintiffs are correct this question was before the District Court, Plaintiffs conceded at oral argument before the Court of Appeals that they no longer disputed that the WDA was a statutory cause of action. [*Compare* AB 1; 2-27-24 Tr. 10:59:52-11:00:09] Plaintiffs' third option asks this Court to overrule its "standing as jurisdictional prerequisite" line of cases," because the Court initially articulated this principle in a footnote. [AB 4, 15-22]

For the reasons set forth in its Brief-in-Chief, Sound Physicians respectfully request that this Court reverse the Court of Appeals and affirm the District Court's holdings that the WDA is a statutory cause of action, that standing is a jurisdictional prerequisite for this Court to hear any claims pursuant to its terms, that Rule 1-017(B) governs the timing of the request for a PR, and that dismissal was appropriate in this case.

I. ARGUMENT

A. THE WDA IS A STATUTORY CAUSE OF ACTION.

The Court of Appeals began its analysis by stating: “Plaintiffs acknowledge that a wrongful death cause of action originates entirely by statute but maintain that standing is nevertheless not jurisdictional because the WDA is not the type of statute in which the Legislature has granted specific persons a cause of action.” *Lopez*, 2024-NMCA-055, ¶ 17 (internal quotation marks and quoted authority omitted). Although Plaintiffs agreed at oral argument before the Court of Appeals that they no longer challenged that the WDA was a statutory cause of action, Plaintiffs now raise the issue again for decision by this Court because reversal of the Court of Appeals’ on this ground would permit this Court to forgo any analysis of the jurisdictional question. [2-27-24 Tr. 10:59:52-11:00:09; AB 5-15] Indeed, Plaintiffs did not raise the question in their briefing to the Court of Appeals or in their Response to Sound Physicians’ Petition for Writ of Certiorari to this Court. [*See, generally, Rsp.*] Plaintiffs now ask this Court to reverse the Court of Appeals on a question previously not considered on appeal. Plaintiffs’ arguments are contrary to well-established New Mexico law regarding the WDA and its development as a cause of action not only unknown, but barred, at common law.

New Mexico law is clear that an action for wrongful death did not exist at common law. *See Johnston*, 2016-NMSC-013, ¶ 12 (distinguishing common law

action under Uniform Commercial Code from statutory cause of action and stating: “Thus, this action is not a representative of a right created by statute, such as a wrongful death action.” (Internal quotation marks and quoted authority omitted.); *Chavez*, 1985-NMSC-114, ¶ 7. “At common law there was no right of action for wrongful death.” *Id.* “Any such right of action is purely statutory.” *Id.*; *see also Est. of Krahmer ex rel. Peck v. Laurel Healthcare Providers, LLC*, 2014-NMCA-001, ¶ 6, 315 P.3d 298.

“When the [WDA] was passed in 1882, it abrogated the common law by providing statutory authority for a wrongful death action to be brought by the personal representative of the injured, deceased person.” *Id.* The right to bring an action for wrongful death did not exist at common law, and, indeed, was barred by common law. *See Est. of Brice v. Toyota Motor Corp.*, 2016-NMSC-018, ¶¶ 18-20, 373 P.3d 977 (“Wrongful death actions were not permitted at common law based on the belief that the right of recovery died with the injured party and on the theory that a person harmed by another’s death had no right to recover.”); *see also Est. of Krahmer ex rel. Peck*, 2014-NMCA-001, ¶ 6 (“As a statute in derogation of the common law, it is to be afforded a strict, rather than an expansive construction.” (Internal quotation marks, quoted authority, and alterations omitted.)).

Notwithstanding this established law, Plaintiffs state that “the WDA is clearly not a creature of statute in any fundamental or important sense” and encourage this

Court to re-examine these holdings pursuant to the analysis set forth in *Johnston*. [AB 15] Plaintiffs’ argument ignores this Court’s published authorities and its reasoning in *Johnston* that the linchpin of this analysis is whether the cause of action codified by Legislative enactment existed at common law. 2016-NMSC-013, ¶¶ 10-12; *see also In re Forest*, 1941-NMSC-019, ¶ 10, 45 N.M 204, 113 P.2d 582.

In *Johnston*, the Court concluded that the action to enforce a promissory note, though now codified by the Uniform Commercial Code, existed at common law and therefore such action fell within the district court’s original jurisdiction, and statutory jurisdiction construction principles did not apply. 2016-NMSC-013, ¶ 12.

The Court reasoned:

The cause of action to enforce a promissory note originated at common law and already existed when New Mexico adopted the Uniform Commercial Code (UCC) in 1961. New Mexico's adoption of the UCC did not create the rights and remedies associated with actions to enforce promissory notes, but instead merely codified those rights and clarified their scope in the interest of attaining uniformity with other states that had adopted the UCC. Indeed, the UCC recognizes the continuing vitality of common law “principles of law and equity” which supplement its provisions. Thus, an action to enforce a promissory note fell within the district court's general subject matter jurisdiction in this case because it was not created by statute.

Id. (citations omitted).

Even if this Court were to apply Plaintiffs’ suggested analysis from *Johnston*, the WDA would fail on the first element – whether the statute codified certain existing rights and clarified their scope. *Id.* [See *id.* 9] Equally, the remaining two

(2) considerations also require that this Court look to the common law origins of the cause of action to be evaluated. The right to bring an action for wrongful death, unlike an action on a note, did not exist at common law, and, indeed, was barred by the common law. *See Est. of Brice*, 2016-NMSC-018, ¶¶ 18-20. The WDA did not “merely codif[y] those rights and clarify[y] their scope.” *Johnston*, 2016-NMSC-013, ¶ 12. As such, the WDA cannot acknowledge “the continuing vitality of common law principles of law and equity which supplement its provisions,” and the common law is not the principal source of law governing the rights and duties of the parties. *Id.*

Plaintiffs attempt to broaden that construction and argue that since the tort of negligence and the right to sue in tort existed at common law, a wrongful death cause of action is simply an expansion of common law negligence. Such attempt is contrary to New Mexico law and Plaintiffs’ own cited authorities. [*See id.* 12-13] For example, relying on *Estate of Brice*, Plaintiffs assert that the “WDA does not create a new cause of action merely by lifting a bar to recovery of damages after death.” 2016-NMSC-018, ¶ 20. [*Id.* 12] However, nothing in *Estate of Brice* supports such a conclusion. Rather, in *Estate of Brice*, the Supreme Court considered whether the doctrine of fraudulent concealment applied to the WDA. *See id.* ¶ 1. The *Estate of Brice* Court allowed the doctrine of fraudulent concealment to apply to the WDA statute of limitations in part because “when the Legislative

Assembly reinstated the limitations provision in the WDA, it was on notice that the common-law doctrine of fraudulent concealment existed as part of the common law of New Mexico.” *Id.* ¶ 25.

Plaintiffs conclude that if a cause of action for wrongful death were created by statute, then “standing to bring the action would be ‘jurisdictional’ and therefore not subject to judicial modification.” **[*Id.* 13]** Plaintiffs neither explain, nor cite to any authority for, how the operation of the statute of limitations is part of the analysis of whether the WDA is a statutory cause of action or part of any standing analysis regarding who may bring an action for wrongful death under the WDA. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329. This Court can assume none exists. *See id. Estate of Brice* only confirms that the Legislature created a statutory cause of action, not recognized at common law, in enacting the WDA. 2016-NMSC-018, ¶ 18 (“Wrongful death actions were not permitted at common law based on the belief that the right of recovery died with the injured party and on the theory that a person harmed by another’s death had no right to recover.”).

Similarly, Plaintiffs’ reliance on *Estate of Krahmer ex rel. Peck* is unavailing. **[*See id.* 13-14]** In that case, the Court of Appeals concluded that the WDA PR was bound by an arbitration agreement “that would have bound [the decedent] had she lived.” 2014-NMCA-001, ¶ 5. The Court recognized that the PR holds the same rights as the decedent under the WDA, if the decedent were able to bring that action.

See id. ¶ 1. Nothing in *Estate of Krahrmer ex rel. Peck* contradicts the conclusion that the WDA is a statutory cause of action. Rather, the Court stated: “When the [WDA] was passed in 1882, it abrogated the common law by providing statutory authority for a wrongful death action to be brought by the personal representative of the injured, deceased person.” *Id.* ¶ 6. That Court also confirmed that “a literal reading of the statute gives the personal representative a cause of action, only if the decedent could have had one, absent death.” *Id.* ¶ 8 (internal quotation marks, quoted authority, and alterations omitted). The WDA is a statutory cause of action.

B. STANDING IS A JURISDICTIONAL PREREQUISITE FOR STATUTORY CAUSES OF ACTION.

Article VI, Section 13 of the New Mexico Constitution states: “The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as provided by law . . .” Thus, the district court has two forms of jurisdiction: original and statutory. *Ottino v. Ottino*, 2001-NMCA-012, ¶ 7, 130 N.M. 168, 21 P.3d 37. The first type, original jurisdiction, “covers those matters known to the common law and equity practice of England prior to 1776.” *Id.* ¶ 8 (internal quotation marks and quoted authority omitted). In contrast, statutory jurisdiction includes “special cases and proceedings as provided by law[,]” that is to say “statutory proceedings to enforce

rights and remedies created by statute and which were unknown to the common law.
..” N.M. Const. art. VI, § 13; *In re Forest*, 1941-NMSC-019, ¶ 10.

“Where a cause of action is created by statute, the Legislature empowers the courts to adjudicate a new kind of claim and, thus, the Legislature may condition the exercise of that power on the plaintiff’s satisfaction of certain prerequisites.” *Phoenix Funding, LLC v. Aurora Loan Servs., LLC*, 2017-NMSC-010, ¶ 19, 390 P.3d 174. And “when a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction. Standing then becomes a jurisdictional prerequisite to an action.” *Johnston*, 2016-NMSC-013, ¶ 11 (internal quotation marks and quoted authority omitted).

Plaintiffs do not contest that the New Mexico Constitution creates both original and statutory jurisdiction. Rather, Plaintiffs urge this Court to “clarify that subject matter jurisdiction is not contingent on or related to the issue of standing, even in statutory causes of action” and to adopt the approach taken by Judge Bustamante in his concurrence based on *Sundance Mechanical & Utility Corp. v. Atlas*, 1990-NMSC-031, ¶ 24, 109 N.M. 683, 789 P.2d 1250. [AB 15-22] Plaintiffs offer no substantive argument as to why *Sundance Mechanical & Utility Corp.* applies or should contravene this Court’s statement of the law in *Johnston*. [See *id.* 22] This Court need not consider it. See *In re Adoption of Doe*, 1984-NMSC-024,

¶ 2 (“We have long held that to present an issue on appeal for review, an appellant must submit argument *and authority* as required by rule. (Emphasis in original.)).

Even if the Court were to consider it, *Sundance Mechanical & Utility Corp.* does not provide this Court the necessary guidance. Sound Physicians first notes that the Supreme Court acknowledged in that case that a district court has only such jurisdiction as is conferred by statute for “special cases or proceedings.” 1990-NMSC-031, ¶ 13; N.M. Const. art. VI, § 13. The Court then considered whether the failure of a complaint to state a claim operated to deprive that court of subject matter jurisdiction. *Sundance Mech. & Utility Corp.*, 1990-NMSC-031, ¶ 18. The Court evaluated whether a contractor’s failure to allege that he was duly licensed deprived the district court of subject matter jurisdiction and determined that the intent of the Legislature was “not to bar the remedy of lawful contractors because of a technical error in their pleadings.” *Id.* ¶¶ 23, 25-26 (internal quotation marks and quoted authority omitted).

No one has ever argued that Plaintiffs failed to state a claim for wrongful death which deprived the District Court of subject matter jurisdiction. Nor is the necessity of seeking appointment of a PR to pursue a wrongful death action merely a “technical error.” *Id.* ¶ 25. As the WDA created the cause of action for wrongful death and places that cause of action in the PR, the PR is the real party in interest who has standing to bring the action. Section 41-2-3.

And Plaintiffs’ complaint that the footnote in *ACLU of New Mexico v. City of Albuquerque*, 2008-NMSC-045, ¶ 9 n.1, 144 N.M. 471, 188 P.3d 1222, is dicta cannot change that this Court in *Johnston* re-affirmed that “[w]hen a statute creates a cause of action and designates who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction[, and s]tanding then becomes a jurisdictional prerequisite to an action.” 2016-NMSC-013, ¶ 11; *see also State v. Mares*, 2024-NMSC-002, ¶ 40, 543 P.3d 1198 (“Moreover, the binary distinction between holding and dicta cannot fully capture the nuances of legal reasoning. Legal opinions can set forth important doctrines, synthesize new analytical frameworks, and establish procedural rules which are not strictly necessary to the decision in the case, but which nonetheless provide legal guidance that should be understood as binding.”).

The question presented in *Johnston* was whether standing was jurisdictional in a foreclosure case. 2016-NMSC-013, ¶ 10. The Supreme Court reiterated that New Mexico’s “jurisprudence has previously recognized that standing is jurisdictional in the context of statutory causes of action rather than all causes of action.” *Id.* It should also be noted that this Court in *Johnston* sought to clarify its holding from *Bank of New York v. Romero*, 2014-NMSC-007, ¶¶ 19–38, 320 P.3d 1. The Supreme Court stated: “[W]e take this opportunity to clarify our statements in *Bank of New York*, 2014-NMSC-007, ¶ 17, 320 P.3d 1, and hold that mortgage

foreclosure actions are not created by statute. Therefore, the issue of standing in those cases cannot be jurisdictional.” *Johnston*, 2016-NMSC-013, ¶ 11.

Plaintiffs ask this Court to “defuse” the “buried . . . ticking time bomb” it set in the *ACLU* footnote and conclude that, although Article VI, Section 13 specifically delineates two (2) types of subject matter jurisdiction - original and statutory - in the district court, the invocation of the district court’s statutory jurisdiction should not be governed by the statutes at issue. [*Id.* 18] The language in *Johnston* is clear, and standing is governed by the plain language of the WDA. “Where the Legislature has granted specific persons a cause of action by statute, the statute governs who has standing to sue.” *Gandydancer, LLC*, 2019-NMSC-021, ¶ 7. Neither the Court of Appeals nor the District Court erred in its recognition of *Johnston*.

C. REVERSAL OF THE COURT OF APPEALS IS PROPER.

In construing statutory standing, New Mexico courts have confined their analysis to the statutory language itself to determine who has standing to proceed with the articulated cause of action. *See, e.g., San Juan Agric. Water Users Ass’n*, 2011-NMSC-011; *Disabled Am. Veterans*, 2011-NMCA-099; *French-Hesch*, 2010-NMCA-008; *Protection & Advocacy Sys., Inc.*, 1999-NMCA-122. The courts will “look to the Legislature’s intent as expressed in the Act or other relevant authority. Where the Legislature has granted specific persons a cause of action by statute, the statute governs who has standing to sue.” *San Juan Agric. Water Users Ass’n*, 2011-

NMSC-011, ¶ 8 (internal quotation marks, quoted authority, and citation omitted). Where standing is governed by specific statutory language, the Court does not conduct any analysis of prudential considerations. *Protection & Advocacy Sys., Inc.*, 1999-NMCA-122, ¶ 21.

While the Court of Appeals accepted this Court’s holdings on statutory standing and subject matter jurisdiction, the Court of Appeals set aside the express statutory language that any cause of action under the WDA shall be brought by the PR and departed from the appellate court’s previous analytical construct. *See Lopez*, 2024-NMCA-055, ¶¶ 14-21. Contrary to its previous construction of standing and statutory causes of action, the Court of Appeals applied prudential standing considerations to evaluate who has standing under the WDA and determined that “the injured deceased person, and not the PR, has standing to establish an action under the WDA” because the WDA “protects the injured deceased person’s interests.” *Id.* ¶¶ 16, 18. Such conclusion is contrary to the plain language of the WDA itself.

Section 41-2-3 expressly provides who can bring that cause of action: the PR. Section 41-2-3 states that “[e]very action mentioned in Section 41-2-1 NMSA 1978 shall be brought by and in the name of the [PR] of the deceased person.” *See also* NMSA 1978, § 12-2A-4(A) (1997) (“A. ‘Shall’ and ‘must’ express a duty, obligation, requirement or condition precedent.”). The Court of Appeals recognized

that “New Mexico courts have characterized the [WDA] as a statute that transmits the decedent’s rights to file a claim to the representative of the wrongful death estate.” *Lopez*, 2024-NMCA-055, ¶ 19 (internal quotation marks and quoted authority omitted). Thus, statutory standing under the WDA lies in the PR, and to apply the Court of Appeals’ reasoning makes the WDA the exception.

Additionally, the Court of Appeals erred by not considering the application of Rule 1-017(B) in its analysis. Although the Court of Appeals framed the question presented as “whether a failure to petition for appointment of a PR before or simultaneously with the filing of the original complaint brought under the WDA is a jurisdictional defect that requires dismissal of the action” and acknowledged that the District Court relied upon Rule 1-017(B) in its decision, the Court of Appeals declined to evaluate how Rule 1-017(B) might affect the conclusion in this case.

Lopez, 2024-NMCA-055, ¶¶ 1, 3, 22. Rule 1-017(B) provides:

B. Wrongful death actions; [PR.] An action for wrongful death brought under Section 41-2-1 NMSA 1978 shall be brought by the [PR] appointed by the district court for that purpose under Section 41-2-3 NMSA 1978. *A petition to appoint a [PR] may be brought before the wrongful death action is filed or with the wrongful death action itself.*

(Emphasis added.) Rule 1-017(B) mirrors Section 41-2-3 in stating that the wrongful death action *shall* be brought by the PR. *Id.* The Rule then states that “[a] petition to appoint a [PR] may be brought before the wrongful death action is filed or with the wrongful death action itself.” *Id.* The Rule presents two options. Neither

occurred in this case. Standing must be established at the outset of suit. *See Bank of New York*, 2014-NMSC-007, ¶ 17. Application of Rule 1-017(B) ensures that any wrongful death action proceeds accordingly.

II. CONCLUSION

WHEREFORE, for the above-stated reasons, Sound Physicians respectfully requests that this Court reverse the Court of Appeals and affirm the Order of the District Court dismissing Plaintiffs' wrongful death action for lack of jurisdiction.

Respectfully submitted,

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I **HEREBY CERTIFY** that a true and correct copy of the foregoing pleading was e-filed and successfully served by electronic means on the following this 11th day of October, 2024, to the following parties and counsel of record:

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