



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

TRISHA CONKLIN,

Plaintiff/Respondent,

v.

Sup. Ct. No. S-1-SC-40987
Ct. App. No. A-1-CA-40924

SIERRA VISTA HOSPITAL GOVERNING
BOARD and SIERRA VISTA HOSPITAL,

Defendants/Petitioners,

and

DAVID L. PAUSTIAN, D.O.; SURGICARE,
LLC, a New Mexico Limited Liability
Corporation; CHG MEDICAL STAFFING,
INC., a Delaware Corporation; QUORUM
HEALTH RESOURCES, LLC; QUORUM
HEALTH CORPORATION; and QUINCY
HEALTH, LLC,

Defendants.

**SIERRA VISTA HOSPITAL GOVERNING BOARD AND SIERRA VISTA
HOSPITAL'S BRIEF IN CHIEF**

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ORAL ARGUMENT REQUESTED

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CERTIFICATE OF COMPLIANCE

As required by Rule 12-318(G), we certify that this Brief complies with the type-volume limitation of Rule 12-318(F)(3). According to Microsoft Office Word, the body of the Brief, as defined by Rule 12-318(F)(1), contains 10,984 words.

DATED this 2nd day of January, 2026.

/s/ Elizabeth A. Martinez
Elizabeth A. Martinez

STATEMENT REGARDING CITATIONS TO THE PROCEEDINGS

Citations to any audio-recorded transcripts are to the date of the proceedings and, where applicable, to the time stamp provided by the FTR software. Citations to any written transcripts are to the date of the proceedings and, where applicable, to the page number of the written transcript.

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I. INTRODUCTION

The New Mexico Tort Claims Act (“TCA”) requires that all plaintiffs who claim damages from a state or local public body under the TCA must serve the public body with “a written notice stating the time, place and circumstances of the loss or injury” within “ninety days after an occurrence giving rise to a claim.” NMSA 1978, § 41-4-16(A). Failure to give timely notice under this provision generally serves as a jurisdictional bar to TCA claims. NMSA 1978, § 41-4-16(B). However, if “the injured person is incapacitated from giving the notice by reason of injury,” the notice period may be extended for up to 90 additional days under Section 41-4-16(B). This Court has never addressed the meaning of the word “incapacitated” in Section 41-4-16(B).

In this case, Plaintiff-Respondent Trisha Conklin brought malpractice claims against multiple defendants based on allegations that Doctor David Paustian, D.O., a physician at Defendant-Petitioner Sierra Vista Hospital, performed an overly invasive surgery on Plaintiff. Although Plaintiff knew the facts giving rise to her claim by February 21, 2018, she waited 119 days to serve her TCA notice on Sierra Vista Hospital and Defendant-Petitioner Sierra Vista Hospital Governing Board (collectively, “SVH”).

In the District Court and on appeal, Plaintiff argued that her physical condition rendered her incapacitated from giving timely notice and, therefore, tolled the 90-day notice period. The District Court properly rejected this argument based on its determination that the word “incapacitated,” as used in Section 41-4-16(B), references a plaintiff’s mental capacity to make decisions rather than her physical capacity to perform daily activities. It dismissed Plaintiff’s claims for lack of jurisdiction under Rule 1-012(B)(1) because Plaintiff did not serve a timely TCA notice and could not establish that she had been “incapacitated” from doing so.

The Court of Appeals reversed and defined “incapacitated” as **either** a physical inability to give notice **or** a mental inability to cause an agent to give notice. This conflicts with New Mexico law on notice, as well as the language and policy of the TCA. It also opens the floodgates for attempts to extend the TCA’s notice period based on claimed incapacity. In addition to this error, the Court of Appeals adopted a new standard for when Rule 1-012(B)(1) motions to dismiss for lack of jurisdiction must be converted to summary judgment motions, which conflicts with existing law and undermines district courts’ ability to resolve jurisdictional questions before trial.

SVH respectfully requests that this Court reverse the Court of Appeals and affirm the District Court’s thoughtful and well-supported decision.

II. FACTUAL AND PROCEDURAL HISTORY

A. Plaintiff's Medical History

Approximately two years before the events underlying this lawsuit, Plaintiff was involved in a car accident that damaged her spinal cord and left her paraplegic. [RP1:4] As a result, Plaintiff was confined to a wheelchair and had decreased sensation in her buttocks. [*Id.*] She experienced ongoing pain from her spinal cord injury, which she treated with morphine and Oxycodone. [RP4:821 at 11:22-13:25; RP4:1043 at 58:11-59:25] Plaintiff's narcotic medication did not interfere with her ability to care for her children, attend physical therapy, or perform daily tasks. [RP4:1043, Pl. Dep. at 58:11-59:25 (“It’s not about the medication. The medication is not – it don’t affect me. That was not the case.”)]

In early February 2018, Plaintiff accidentally burned her buttocks with a heating pad. [RP1:4] She sought treatment at SVH, where she was admitted to the hospital and diagnosed with cellulitis, burns, and sepsis. [RP1:4-5] On February 15-16, 2018, Dr. Paustian performed surgeries to debride and close Plaintiff's burn wounds. [RP1:5-6] Plaintiff was discharged on February 18, 2018. [RP1:6]

On February 22 and February 24, 2018, Plaintiff returned to the SVH emergency room with pain and nausea. [RP1:7-8] During the second ER visit, she was transferred to Mountain View Regional Medical Center, where she was admitted for wound-care and other treatment until March 13, 2018. [RP1:8-9]

B. Plaintiff's Mental Capacity After the Surgeries

Plaintiff received in-home nursing care after her February 18 discharge from SVH and again after her March 13 discharge from Mountain View. **[See RP3:663-64 (undisputed); RP3:719]** During this time, nurses assessed Plaintiff's mental capacity and determined that she was competent to enter contracts and make healthcare decisions. **[RP3:683 at 23:3-25:11; RP3:685 at 32:9-17, RP3:686 at 37:6-11; RP3:695-96 at 39:17-41:4, 52:3]**

1. Nurse Ryan Ramos

Plaintiff met with Ryan Ramos, an admitting nurse at Sierra Home Health (not affiliated with SVH), for intake sessions on February 20 and March 15, 2018. **[RP3:681 at 10:4-20; RP3:737 at 17:2-18; RP3:686 at 34:2-12]** Plaintiff also met with Nurse Ramos on March 10, 2018 for a "continuation of care" assessment. **[RP3:686 at 34:22-36:1]** During each meeting, Nurse Ramos assessed Plaintiff's mental capacity in order to ensure that she was eligible for in-home healthcare and able to enter a valid agreement with Sierra Home Health. **[RP3:681-82 at 10:16-20, 13:6-14:24; RP3:686 at 36:5-37:5]** This required Nurse Ramos to evaluate whether Plaintiff was alert and oriented enough to understand and consent to services. **[See RP3:681-82 at 13:6-14:24; RP3:684 at 28:20-29:10]**

Nurse Ramos determined that Plaintiff was alert, oriented, and able to answer questions about her medical and medication history. **[RP3:682 at 14:25-**

16:12; RP3:683-84 at 25:13-26:21; RP3:684 at 27:17-28:6; RP3:685 at 31:24-32:8; RP3:686 at 34:24-36:23] He also determined that Plaintiff’s “mental ability was clear” and that she was able to perform activities that required decision-making, including making healthcare decisions. **[RP3:683 at 23:3-25:11; RP3:685 at 32:9-17; RP3:686 at 37:6-11]** During both intake sessions, Plaintiff reported that she had not felt confused during the past 14 days. **[RP3:683 at 22:4-23; RP3:685 at 32:9-13]**

If these interviews had raised concerns regarding Plaintiff’s mental capacity, Nurse Ramos would have discontinued the admission to home healthcare. **[RP3:684-85 at 28:7-29:10, 31:4-23]** He did not have any such concerns, however, and he admitted Plaintiff for treatment following the March intake session.¹ **[RP3:685-86 at 30:1-34:1; RP3:764 at 14:11-15]** Although Nurse Ramos observed that Plaintiff’s paraplegia created some physical limitations on her ability to care for her children, he did not have concerns about Plaintiff’s ability to make decisions for her children. **[RP3:686-87 at 37:12-38:13]**

2. Nurse Jennifer Ramirez

Nurse Jennifer Ramirez performed in-home nursing services for Plaintiff between February and June 2018. **[See RP3:690 at 8:5-22, 9:15-23; RP3:764 at 14:5-15, 15:1-8]** During each visit, Nurse Ramirez conducted a “head-to-toe

¹ Nurse Ramos did not complete the admission in February because Plaintiff returned to the hospital. **[RP3:685 at 30:1-16]**

assessment,” which required her to assess Plaintiff’s neurological status and call the doctor “if anything was abnormal.” **[RP3:764 at 15:9-22]** As part of this assessment, Nurse Ramirez evaluated whether Plaintiff was oriented, able to retain information, and able to discuss her medical history. **[RP3:765 at 18:3-19:21]**

Nurse Ramirez did not have concerns about Plaintiff’s mental capacity. **[RP3:695 at 39:17-41:3]** She testified that Plaintiff was never “incapacitated”—a term Nurse Ramirez defined as “unable to make safe and accurate decisions regarding . . . [her] own care or another person’s needs.” **[RP3:695-96 at 39:17-23-40:10, 52:3]** To the contrary, Nurse Ramirez observed that Plaintiff was able to make healthcare decisions, such as when to take Tylenol or change her own catheter.² **[RP3:692-93 at 27:24-29:7, 30:14-31:17]** Nurse Ramirez also observed that Plaintiff (1) “was always on the phone with her mom,” **[RP3:695 at 41:7-24]** (2) would call an insurance representative “to do follow-up . . . concerning durable medical equipment and . . . caregiver service[s],” **[RP3:695 at 41:7-24]** and (3) was “constantly” calling a personal care service to ask when they were going to come help with house cleaning. **[RP3:772 at 48:17-49:14]**

Nurse Ramirez did not have concerns about Plaintiff’s ability to make decisions regarding her children, and testified that Plaintiff was able to “g[e]t her

² Nurse Ramirez provided “guidance” regarding some medical decisions, such as when to return to the ER, because Plaintiff could not always feel the symptoms of infection due to paraplegia. **[RP3:771 at 42:21-44:4]**

kids ready for school and put them on a school bus” each morning. [RP3:694 at 35:22-25; RP3:692 at 27:4-13; RP3:697 at 54:17-55:13] Although Plaintiff appeared overwhelmed, groggy, or depressed at times [RP3:697 at 57:15-25; RP3:694 at 35:12-21], Nurse Ramirez never doubted Plaintiff’s ability to make personal decisions. [RP3:695-96 at 38:8-39:4, 51:17-52:3]

3. Dr. Kenneth Waxman, M.D.

Plaintiff identified an expert physician, Dr. Kenneth S. Waxman, M.D., to provide medical opinions in this matter. Dr. Waxman could not form an opinion as to Plaintiff’s mental capacity between March and June 2018, however, because he did not evaluate Plaintiff during that time. [RP1:170-71, ¶ 25]

C. Plaintiff’s Physical Capacity After Surgeries

Unsurprisingly, Plaintiff experienced physical limitations while recovering from surgery. [RP3:686-87 at 37:19-38:13; RP3:692 at 26:6-9] These limitations related to her pre-existing paraplegia as well as the recent surgeries. [See RP3:697 at 56:19-57:14; RP3:775 at 58:1-16; RP3:744 at 48:2-15]

Plaintiff’s parents assisted with some daily activities during this recovery period. Her father helped with grocery shopping, picking up prescriptions, reminding Plaintiff to eat and drink, and helping Plaintiff into her wheelchair. [RP3:746] He continued shopping and picking up prescriptions for “several months” after Plaintiff’s discharge from Mountain View. [RP3:746] He also paid

Plaintiff's bills between March and August or September of 2018. **[RP3:746]** Plaintiff's mother helped watch Plaintiff's children, clean the house, prepare meals, and do laundry. **[RP3:772 at 46:25-47:16]** Even before her surgeries, however, Plaintiff used a personal care service to assist with household tasks that were difficult because of her paraplegia. **[See RP3:775 at 58:1-11]**

Nurse Ramirez observed that Plaintiff slept a lot due to chronic pain and reported being depressed due to paraplegia between February and June 2018. **[RP3:765 at 20:3-22:1]** This did not give Nurse Ramirez "reason for concern," however **[RP3:765 at 20:3-22:1]**, and she observed that Plaintiff was physically able to perform tasks such as "get[ting] in her wheelchair and wheel[ing] herself out her front door." **[RP3:697 at 55:8-13; RP3:775 at 60:9-13]** On "a few" occasions, Nurse Ramirez assisted Plaintiff with scheduling medical appointments because she believed the task would have been more difficult for Plaintiff due to pain and sleep issues. **[RP3:694 at 36:9-37:9]**

D. Plaintiff's Claim Accrual and TCA Notice

On February 21, 2018, Plaintiff complained to Nurse Ramirez about the surgeries performed by Dr. Paustian. **[RP3:691 at 22:14-23:24]** Nurse Ramirez documented this complaint in a nursing note, which states: "Throughout this visit, patient continued to cry and complain of surgical procedure that she underwent. States that the MD should not have been so invasive." **[RP3:691 at 22:14-23:24]**

Nurse Ramirez testified that her nursing note accurately documented the substance of Plaintiff's complaint. **[RP3:691 at 23:16-24; RP3:771 at 42:5-13]**

Plaintiff served SVH with a tort claim notice on June 20, 2018, 119 days after her complaint to Nurse Ramirez. **[RP1:63-64]** In her notice, Plaintiff asserted that she had been “negligently subjected to multiple improper, aggressive and harmful ‘wound care’ procedures” by Dr. Paustian, which were “unnecessary” and “brutal.” **[RP1:63-64]**

E. Procedural History

In 2020, Plaintiff brought this lawsuit against SVH and other defendants not involved in this appeal. **[RP1:1-20]** SVH responded by moving to dismiss for lack of subject-matter jurisdiction, pursuant to Rule 1-012(B)(1) and Section 41-4-16(B), based on Plaintiff's failure to serve a timely TCA notice. **[RP1:55-64]** After briefing and a hearing, the District Court requested jurisdictional discovery regarding whether Plaintiff had been incapacitated from giving notice under Section 41-4-16(B). **[RP2:284-86]**

After jurisdictional discovery, SVH filed an amended motion to dismiss or, in the alternative, motion for summary judgment (“Amended Motion”). **[RP3:659-701]** In the motion, SVH argued that the Complaint should be dismissed for lack of jurisdiction because (1) Plaintiff was aware of her injury and its alleged cause by February 21, 2018, when she complained to Nurse Ramirez, (2) Plaintiff failed to

send a TCA notice within 90 days after learning the basis for her claims, and (3) testimony from Nurses Ramos and Ramirez established that Plaintiff was not incapacitated from causing a timely TCA notice to be served. **[RP3:659-701]** Plaintiff responded by arguing, in relevant part, that she had been incapacitated during the notice period because she had required assistance with daily activities due to her physical condition. **[See RP3:725-26]**

After multiple evidentiary hearings, the District Court granted the Amended Motion on October 31, 2022. **[12/6/21 Tr.; 1/24/22 Tr.; 10/31/22 Tr.]** The court began its oral ruling by finding that (1) SVH had met its initial burden of showing that Plaintiff failed to serve a timely TCA notice, and (2) the burden shifted to Plaintiff to establish that she had been incapacitated during the notice period. **[10/31/22 Tr. at 2:57:11-2:57:34]**

The court went on to determine that the TCA’s incapacity-based tolling provision “requires more than just a physical injury” and, instead, turns on whether a plaintiff “lack[s] sufficient understanding to make or communicate reasonable personal decisions.” **[10/31/22 Tr. at 2:58:08-2:58:17, 2:58:26-2:58:40]** The court concluded that Plaintiff had failed to present evidence to satisfy this definition **[10/31/22 Tr. at 3:04:34-3:05:00]**, based on the following findings:

- Nurses Ramos and Ramirez were credible and were in the best position to observe Plaintiff’s mental capacity because they saw her on a regular

basis, conducted evaluations early in Plaintiff's recovery, and were unbiased. **[10/31/22 Tr. at 3:03:56-3:04:27]**

- On February 20, 2018, Nurse Ramos received Plaintiff's consent to services and was not concerned about Plaintiff's mental capacity. **[10/31/22 Tr. at 2:59:57-3:00:29]** Nurse Ramos believed Plaintiff was capable of making decisions for herself and her children. **[10/31/22 Tr. at 3:00:30-3:00:45]**
- Nurse Ramirez observed that Plaintiff could (1) make decisions about her children, (2) make decisions about her own health, and (3) assist her children with getting ready for school. **[10/31/22 Tr. at 3:00:47-3:01:26]** Nurse Ramirez did not have concerns about Plaintiff's decisions to take pain medication or her ability to make personal decisions. **[10/31/22 Tr. at 3:01:27-3:01:32, 3:01:46-3:01:50]**
- Nurse Ramirez found Plaintiff to be alert, oriented, and not incapacitated. **[10/31/22 Tr. at 3:01:51-3:02:00]** She also witnessed Plaintiff making phone calls to her insurance representative and her mother. **[10/31/22 Tr. at 3:02:01-3:02:10]**
- Plaintiff's February 21, 2018 statement that Dr. Paustian's surgeries should not have been so intrusive showed that Plaintiff had cognitive understanding and concern regarding whether there had been a breach of

Dr. Paustian's duty of care. [10/31/22 Tr. at 3:02:21-3:03:00]

- Plaintiff knew or should have known that there was a potential problem regarding the surgeries and a potential breach of a duty of care by February 22, 2018. [10/31/22 Tr. at 3:03:31-3:03:55]
- Plaintiff's expert, Dr. Waxman, could not render an opinion as to whether Plaintiff was incapacitated at relevant times. [10/31/22 Tr. at 3:03:06-3:03:20]

The District Court entered a Rule 1-054(B) Final Judgment dismissing Plaintiff's claims for lack of jurisdiction [RP8:1829-30], and Plaintiff appealed.

F. The Court of Appeals' Opinion

The Court of Appeals reversed. It began by converting SVH's Amended Motion to a summary judgment motion because it found that the jurisdictional question—Plaintiff's capacity to give notice—"depends on facts that are relevant to [Plaintiff's] substantive claim of negligence, including her damages." Op. ¶ 14. Next, the Court determined that a person is "incapacitated from giving notice by reason of injury" under Section 41-4-16(B) "if the person, as a result of injury, was unable to prepare and give notice of their tort claim, or was unable to cause another to give such notice on their behalf." Op. ¶¶ 1, 16-23. It concluded that Plaintiff had created a fact dispute on incapacity based primarily on evidence that Plaintiff received assistance from her parents with daily activities following her surgeries.

Op. ¶ 26. The Court did not consider the testimony of Plaintiff's nurses, which established that Plaintiff was mentally competent to make healthcare decisions and enter contracts between February and June 2018. *See id.*

SVH filed a timely petition for certiorari, which this Court granted on November 6, 2025.

III. STANDARD OF REVIEW

“In reviewing an appeal from an order granting or denying a motion to dismiss for lack of jurisdiction, the determination of whether jurisdiction exists is a question of law which an appellate court reviews *de novo*.” *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, ¶ 17, 388 P.3d 977 (internal quotes and citation omitted). Questions regarding statutory interpretation and interpretation of the rules of civil procedure also are reviewed *de novo*. *State v. Gutierrez*, 2023-NMSC-002, ¶ 22, 523 P.3d 560; *State v. Stephen F.*, 2006-NMSC-030, ¶ 7, 140 N.M. 24.

SVH's Amended Motion challenged the factual basis for subject matter jurisdiction under Rule 1-012(B)(1). [***See RP4:810*** (“[T]his is first and foremost a Motion to Dismiss for lack of subject matter jurisdiction....”)] In deciding this factual challenge, the District Court had “substantial authority” to “weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *South v. Lujan*, 2014-NMCA-109, ¶¶ 8-9, 336 P.3d 1000. To the extent a plaintiff

challenges the District Court’s jurisdictional findings, appellate courts ““use the substantial evidence standard for review of the facts and then conduct a *de novo* review of the trial court’s application of the law to those facts.”” *Haynes v. Lujan*, No. A-1-CA-38014, 2021 WL 3113045, at *1 (N.M. Ct. App. July 22, 2021) (quoting *Allen v. Timberlake Ranch Landowners Ass’n*, 2005-NMCA-115, ¶ 13, 138 N.M. 318). “Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Allen*, 2005-NMCA-115, ¶ 15. Under the substantial evidence standard, appellate courts “resolve all disputed facts and indulge all reasonable inferences in favor of the trial court’s findings.” *Id.* ¶ 13.³

IV. ARGUMENT

A. The Court of Appeals Adopted a Definition of “Incapacitated from Giving the Notice” that Conflicts with Existing Law and Is Inconsistent With the Language and Policies of the TCA.

Preservation. SVH raised this in its Court of Appeals Answer Brief (“AB”) at 16-36, and in its Amended Motion and related briefing in the District Court. [RP3:659-701, RP4:809-22]

Discussion. The Court of Appeals determined that a person is “incapacitated from giving notice by reason of injury” under Section 41-4-16(B) “if the person, as

³ Even if this Court applies a summary judgment standard and reviews *de novo*, it should reverse the Court of Appeals and affirm the District Court because Plaintiff did not present evidence to create an issue of material fact regarding the existence of incapacity during the notice period.

a result of injury, was unable to prepare and give notice of their tort claim, or was unable to cause another to give such notice on their behalf.” Op. ¶¶ 1, 16-23. In support of this broad definition, the court noted that incapacity can be mental or physical because “[t]he TCA contemplates recovery for both physical and mental injury.” Op. ¶ 23. This Court should reject the Court of Appeals’ interpretation of incapacity because (1) it is inconsistent with the language of the TCA and existing New Mexico case law, and (2) it would undermine the legislative intent of Section 41-4-16(B) by extending the notice period in many cases.

As explained herein, the language and policy of the TCA support a limited interpretation of the tolling provision that would extend the statute’s notice period only when a plaintiff is mentally incapacitated from making decisions about their potential claim and causing another to give notice on their behalf. In this case, the District Court properly determined that Plaintiff (1) failed to give notice within 90 days after learning the factual basis for her claim, and (2) did not meet her burden of proving incapacity during the notice period. This Court should reverse the Court of Appeals and affirm the District Court’s decision.

1. Principles of Statutory Interpretation.

In construing a statute, a court's "primary goal is to ascertain and give effect to the intent of the Legislature." *State v. Nick R.*, 2009-NMSC-050, ¶ 11, 147 N.M. 182. "In furtherance of this goal, [courts] examine the plain language of the statute as well as the context in which it was promulgated, including the history of the statute and the object and purpose the Legislature sought to accomplish." *Leger v. Leger*, 2022-NMSC-007, ¶ 26, 503 P.3d 349 (internal quotes omitted).

The plain language of a statute is "the primary indicator of legislative intent." *State v. Willie*, 2009-NMSC-037, ¶ 9, 146 N.M. 481 (internal quotes omitted). "In examining the language used by the Legislature, words must be viewed in the context in which they are used in the statute" and every word "must be considered and given meaning." *Van Buskirk v. City of Raton*, 2022-NMCA-040, ¶ 16, 516 P.3d 185. In addition, courts "construe the entire statute as a whole so that all the provisions will be considered in relation to one another." *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401.

If statutory language gives rise to legitimate differences of opinion, the plain-meaning rule no longer controls. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 23, 117 N.M. 346. Instead, when such ambiguities exist, the court should "constru[e] the statute according to its obvious spirit or reason." *State v.*

Gutierrez, 2023-NMSC-002, ¶ 22, 523 P.3d 560 (internal quotes and bracket omitted).

In this case, both the plain language and policy goals of Section 41-4-16(B) support a limited interpretation of the word “incapacitated” that focuses on a plaintiff’s mental capacity to understand the factual basis of a claim and cause notice to be given.

2. The Plain Language of the TCA Indicates that “Incapacitated” References Mental Incapacity.

The TCA provides that “[n]o suit or action for which [governmental] immunity has been waived . . . shall be maintained and no court shall have jurisdiction to consider any suit . . . unless notice has been given as required” under Section 41-4-16(A). § 41-4-16(B). In order to satisfy this jurisdictional requirement, a plaintiff must “cause to be presented [to the governmental entity] . . . within ninety days after an occurrence giving rise to a claim for which immunity has been waived under the Tort Claims Act, a written notice stating the time, place and circumstances of the loss or injury.” § 41-4-16(A). This notice period may be tolled only as set forth in Section 41-4-16(B), which states: “The time for giving notice does not include the time, not exceeding ninety days, during which the injured person is incapacitated from giving the notice by reason of injury.” § 41-4-16(B).

In order to evaluate the scope of this tolling provision, the Court must determine the “ordinary meaning” of the term “incapacitated.” *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413. Dictionary definitions provide a useful starting point for this inquiry. *See State v. Vest*, 2021-NMSC-020, ¶¶ 14-16, 488 P.3d 626; *Leger*, 2022-NMSC-007, ¶ 31. Black’s Law Dictionary defines “incapacitated person” as “[s]omeone who is impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible.” *Incapacitated Person*, Black’s Law Dictionary (11th ed. 2019)). Merriam-Webster defines “incapacitated” more generally to mean “deprived of capacity or natural power” or “made incapable of or unfit for normal functioning.” *Incapacitated*, Merriam-Webster Dictionary, *available at* [merriam-webster.com/dictionary/incapacitated](https://www.merriam-webster.com/dictionary/incapacitated). These definitions do not end the analysis, however, because they do not address the meaning of “incapacitated” in the context of Section 41-4-16(B). *See Van Buskirk*, 2022-NMCA-040, ¶ 16.

When read as a whole, Section 41-4-16(B) does not toll the statutory notice period if a claimant is “incapacitated” in the general sense. Instead, it applies only when a claimant is “incapacitated from giving the notice.” § 41-4-16(B). “Giving the notice,” as set forth in Section 41-4-16(A), requires the claimant to “cause to be presented” to the governmental entity “a written notice stating the time, place and

circumstances of the loss or injury.” Thus, the tolling provision applies only when a plaintiff is “incapacitated” from understanding “the time, place and circumstances” of their potential claim and “causing” that information to be communicated to the government. This turns on a claimant’s ability to comprehend the factual basis of a potential claim, make decisions regarding whether to pursue the claim, and communicate those decisions to an agent. It does not implicate a claimant’s physical capacity—or lack thereof—unless the claimant’s physical condition prevents them from (1) understanding and making decisions regarding a potential claim, and (2) obtaining an agent to “cause” notice to be given.

This limited interpretation of “incapacitated” is consistent with the structure of Section 41-4-16, which creates a rigid framework requiring timely notice in all but a few situations. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047 (language must be analyzed in context). When it drafted Section 41-4-16, the Legislature made clear that the notice requirement is a mandatory prerequisite to jurisdiction in any New Mexico court. § 41-4-16(B) (“[N]o court shall have jurisdiction . . . unless notice has been given[.]”). The Legislature created a single, narrow exception to the notice requirement when the defendant “had actual notice of the occurrence,” § 41-4-16(B), which applies only when the governmental entity has “actual notice that litigation is likely to ensue,” *Powell v. New Mexico State Highway & Transp. Dep’t*, 1994-NMCA-035, ¶ 8, 872 P.2d 3888. When read

together, these provisions create a predictable rule for governmental entities: if timely notice has not been given, and if the government does not have “actual notice that litigation is likely to ensue,” a court generally must dismiss a TCA claim for lack of jurisdiction.

Consistent with this framework, Section 41-4-16(B) promotes timely notice by placing strict temporal and substantive limits on tolling. With respect to temporal limits, Section 41-4-16(B) extends the notice period by a maximum of 90 days and does not permit additional time if the claimant’s incapacity persists beyond the tolling period. Thus, even the most incapacitated plaintiffs must give notice within 180 days in order to pursue a TCA claim.

This bright-line tolling rule stands in stark contrast to other incapacity-based tolling provisions. For example, in a general tolling provision applicable to statutes of limitations, the Legislature adopted flexible language that allows incapacitated plaintiffs to bring suit within “one year from and after the termination of [their] incapacity.” NMSA 1978, § 37-1-10. Other state legislatures have incorporated similar tolling language into their tort claims acts. *E.g.*, Ind. Code § 34-13-3-9 (“If a person is incapacitated and cannot give notice [under Indiana Tort Claims Act] . . . the person’s claim is barred unless notice is filed within one hundred eighty (180) days after the incapacity is removed.”). The New Mexico Legislature rejected this

liberal framework in the context of the TCA, however, and instead adopted strict limits on tolling that underscore the importance of timely notice.

These temporal limits work hand-in-hand with Section 41-4-16(B)'s substantive limitations to ensure that tolling is the exception rather than the rule in TCA cases. As discussed above, Section 41-4-16(B) permits tolling only when “the injured person is incapacitated from giving the notice by reason of injury.” This language does not extend to all incapacitated claimants but, instead, applies to a narrow subset of incapacitated parties who are unable to understand and communicate the factual basis for a claim. The statute further limits tolling to situations in which the “injured person” is incapacitated “by reason of injury.” § 41-4-16(B). This clarifies that tolling does not extend to incapacity caused by pre-existing conditions or factors such as alcohol use. Instead, it applies only when the “injury” that gives rise to the potential claim—in this case, the surgeries performed by Dr. Paustian—renders the claimant “incapacitated from giving the notice.”

These layers of restrictive language build upon each other and, when viewed as a whole, reflect a legislative intent to limit tolling and other exceptions to the TCA's notice period. Consistent with this legislative intent, the phrase “incapacitated from giving the notice by reason of injury” should be limited to

situations in which a TCA claimant is unable to understand the factual basis for their claim and communicate a desire to pursue it.

3. Policy Goals Underlying the TCA Support SVH's Interpretation of "Incapacitated."

This Court need not look beyond the plain language of Section 41-4-16 in order to answer the question raised by this appeal. To the extent they are relevant, however, the policy goals underlying the TCA support SVH's interpretation of the tolling provision.

The TCA seeks to balance two "important but conflicting policies": limiting the liability of governmental entities and compensating plaintiffs who are injured by the negligence of public employees. *Cobos v. Dona Ana Cnty. Housing Auth.*, 1998-NMSC-049, ¶ 6, 126 N.M. 418. In order to achieve this balance, the TCA provides that governmental entities and employees are immune from tort liability except to the extent that such immunity has been waived by statute. NMSA 1978, § 41-4-4. The Act goes on to waive immunity for a limited number of tort claims, including some claims for medical malpractice. *See* NMSA 1978, §§ 41-4-5 to -12.

Even if immunity has been waived, however, a plaintiff must comply with the TCA's notice requirement in order pursue a claim. § 41-4-16. This notice provision is designed to "further the legislative policy of limiting the sphere of government liability." *Lopez v. State*, 1996-NMSC-071, ¶ 8, 122 N.M. 611. It promotes this policy goal by (1) ensuring that the government has notice of a

potential claim and the opportunity to investigate and question witnesses in a timely fashion, and (2) “allow[ing] the governmental entity to protect itself against false or exaggerated claims while also permitting it to identify and settle meritorious claims.” *Id.* ¶ 8. *See also Ferguson v. N.M. State Highway Comm’n*, 1982-NMCA-180, ¶ 12, 99 N.M. 194.

These policy goals highlight the importance of providing notice to the government within 90 days of an occurrence. In fact, in *Ferguson v. N.M. State Highway Comm’n*, 1982-NMCA-180, the Court of Appeals rejected a due process challenge to the 90-day notice provision and stated: “The unique status of the government as defendant, in the judgment of the legislature, warranted enactment of the Act’s 90-day notice provision, particularly when viewed in the light of stated purposes underlying notice requirements.” *Id.* ¶ 15. Thus, any interpretation of Section 41-4-16 should prioritize timely notice and minimize tolling exceptions that would delay the government’s ability to investigate and protect itself against potential claims. SVH’s interpretation of Section 41-4-16(B) is consistent with these goals because it permits limited tolling when a claimant is unable to understand a claim and cause notice to be given, but requires other claimants to provide timely notice. In contrast, a broad definition of “incapacitated” would undermine legislative goals by encouraging any claimant with physical or mental injuries to allege incapacity and thereby extend the notice period.

4. Case Law Supports SVH’s Interpretation of “Incapacitated.”

New Mexico courts have not directly addressed the meaning of “incapacitated” in Section 41-4-16(B). However, available authority provides additional support for SVH’s statutory interpretation.

Galvan v. Board of County Commissioners of Curry County, 261 F. Supp. 3d 1140 (D.N.M. 2017), is the only case that analyzes the meaning of “incapacitated” in Section 41-4-16(B). In *Galvan*, the court reviewed dictionary definitions in order to ascertain the “most natural meaning of the term ‘incapacitated.’” 261 F. Supp. 3d at 1148-49. Based on these definitions, the court concluded that “‘incapacitated’ as used in § 41-4-16(B) means ‘without capacity to act,’ ‘incapable of acting,’ or ‘powerless to act.’” *Id.* at 1149. Applying these definitions to the evidence before it, the court concluded that the plaintiff—a prisoner who had suffered a beating—was not incapacitated because she was able to work, request medical and mental health treatment, “vindicate her legal rights” by submitting various requests, and make decisions to protect her safety. *Id.* at 1151-52.

SVH generally agrees with the analysis and outcome of *Galvan*. It respectfully submits, however, that the court in *Galvan* erred by adopting a broad dictionary definition of “incapacitated” without considering whether that definition makes sense in the context of Section 41-4-16. *See* 261 F. Supp. 3d at 1148-49.

Specifically, SVH submits that the *Galvan* court should have expressly analyzed whether the phrase “from giving the notice” modifies and narrows the dictionary definition of “incapacitated.” Regardless, even though it favored a broad definition of “incapacitated,” the *Galvan* court focused its final tolling analysis on the plaintiff’s ability to make decisions to improve her situation. *See id.* at 1152 (“In sum, the evidence has convinced this Court that Plaintiff is a savvy, knowledgeable, and experienced inmate whose capacity and capabilities were not meaningfully disrupted by the beating she underwent or the injuries stemming from it.”). Thus, as a practical matter, *Galvan* supports SVH’s position that the phrase “incapacitated from giving the notice” addresses a claimant’s mental capacity rather than physical abilities.

Similarly, in *Ferguson v. New Mexico State Highway Commission*, 1982-NMCA-180, the New Mexico Court of Appeals indicated that a person will not be “incapacitated from giving notice” under Section 41-4-16 if they can obtain an agent to give notice on their behalf. In *Ferguson*, the plaintiffs argued that the TCA’s notice period violated the due-process rights of incapacitated victims. *Id.* ¶ 13. The court noted that the plaintiffs could not establish incapacity under the statute because they had not shown that their attorneys were unable to give timely notice on their behalf. *Id.* This suggests that statutory incapacity will not be found where a plaintiff is able to understand their claim and obtain an agent to give

notice, even if the plaintiff is physically incapacitated from giving their own notice.

SVH's interpretation of Section 41-4-16(B) receives additional support from case law analyzing NMSA 1978, § 37-1-10, which tolls New Mexico statutes of limitations for "incapacitated persons." See *Hagen v. Faherty*, 2003-NMCA-060, ¶ 14, 133 N.M. 605 (notice provisions are analogous to statutes of limitations). In *Varnell v. Dora Consolidated School District*, 756 F.3d 1208 (10th Cir. 2014) (Hartz, J.), for example, the Tenth Circuit analyzed whether the term "incapacitated persons," as used in in Section 37-1-10, extended to alleged incapacity stemming from sexual abuse. 756 F.3d at 1210-11, 1214. In order to answer this question, the court looked to *Lent v. Employment Security Commission of the State of New Mexico*, 1982-NMCA-147, 99 N.M. 407, a worker's compensation case in which the New Mexico Court of Appeals analyzed "the meaning of mental capacity when the asserted lack of capacity is relied on to defeat the application of a time to sue provision." *Id.* ¶ 12.

In *Lent*, the court explained that "[t]he test of mental capacity is whether a person is capable of understanding in a reasonable manner the nature and effect of the act in which the person is engaged." *Id.* ¶ 13. See also *id.* (citing secondary authority for the proposition that "in connection with the assertion or non-assertion of legal rights," a mental incapacity "must be such that the person is unable to

manage his business affairs or estate, or to comprehend his legal rights or liabilities”). The *Varnell* court applied these definitions to Section 37-1-10 and determined that the plaintiff in the case before it was not “incapacitated” because she was able to attend school, discuss her alleged abuse, and decide to pursue her claim. 756 F.3d at 1214.

More recently, in *Bellman v. NXP Semiconductors USA, Inc.*, 248 F. Supp. 3d 1081 (D.N.M. 2017) (Browning, J.), the court considered whether Section 37-1-10 could apply to parties with physical limitations. The plaintiffs in *Bellman* alleged that they had suffered injuries in utero stemming from their mother’s exposure to chemicals during pregnancy. *Id.* at 1092-93. The court analyzed whether the plaintiffs were “incapacitated” under Section 37-1-10, based on the definitions of incapacity set forth in *Lent* and *Varnell*. Initially, the court recognized that the plaintiffs’ alleged injuries “appear[ed] to be physical and not mental.” *Id.* at 1158. However, it determined that the complex injuries alleged in the complaint might render them “unable to manage [their] business affairs or estate, or to comprehend [their] legal rights and liabilities.” *See id.* at 1157-58. Construing the allegations in the light most favorable to the plaintiffs, the court concluded that it was “possible” that Section 37-1-10 tolled the statute of limitations. *Id.* at 1158.

This authority suggests that the term “incapacitated,” as used in New Mexico tolling statutes, generally references a cognitive inability to understand and make decisions regarding a claim. *See Lent*, 1982-NMCA-147, ¶¶ 13-14; *Varnell*, 756 F.3d at 1214. It does not encompass physical incapacity unless the plaintiff’s physical condition compromises their cognitive abilities. *Cf. Bellman*, 248 F. Supp. 3d at 1157-58.

B. The Court of Appeals’ Interpretation of Section 41-4-16(B) Is Inconsistent with the Language and Intent of the TCA.

In this case, the Court of Appeals determined that incapacity under Section 41-4-16(B) involves a broad, fact-dependent inquiry and extends to both physical and mental incapacity. Op. ¶¶ 22-23. Thus, the court found that incapacity can be shown “if the person, as a result of injury, was unable to prepare and give notice of their tort claim, **or** was unable to cause another to give such notice on their behalf.” Op. ¶ 1 (emphasis added). This gives claimants two routes to establishing incapacity: they can **either** establish that they were physically unable to give notice **or** that they were mentally unable to understand a claim and give notice through an agent. The practical consequence of this definition is that any claimant who is physically unable to give notice can potentially establish incapacity and extend the notice period. At the very least, a claimant with physical limitations can argue

incapacity and tie up the government in years of expensive, fact-specific briefing on the question of notice.⁴

This broad definition of incapacity is inconsistent with the language, structure, and policy of the TCA, which—as discussed above—combine to create strict limitations on the scope of governmental liability. The plain language of the TCA extends the notice period only when a claimant is (1) incapacitated from personally giving notice, **and also** (2) incapacitated from causing an agent to give notice of a claim. *See* Section IV.A, *supra*. The Court of Appeals’ definition of incapacity seems to authorize incapacity arguments based solely on the first prong. This conflicts with not only the language of 41-4-16 but also the common-sense rule, recognized in *Ferguson*, that a “claimant is not incapacitated from giving notice of their tort claim if they can cause another person to give notice on their behalf.” Op. ¶ 23 (summarizing *Ferguson*). SVH recognizes that the Court of Appeals may not have intended to create this either/or situation. Nevertheless, SVH submits that the broad definition of incapacity contained in Paragraph 1 of the Opinion must be clarified and narrowed in order to prevent a surge of incapacity claims based on physical injuries.

⁴ In this case, the parties have been briefing the question of incapacity for over five years. Throughout briefing, Plaintiff has argued that she is incapacitated because her physical condition prevents her from functioning normally. *See* NMCA BIC at 24, 37.

The Court of Appeals’ definition also undermines the TCA’s legislative intent. The statute is designed to protect public entities—and taxpayer funds—by limiting the potentially endless scope of governmental liability. NMSA 1978, § 41-4-2(A) (government “should not have the duty to do everything that might be done”); NMSA 1978, § 41-4-4 (government generally immune except as waived by TCA); *Lopez*, 1996-NMSC-071, ¶ 8 (notice provision is designed to “further the legislative policy of limiting the sphere of government liability”). The Court of Appeals’ definition of “incapacitated” works against these goals by permitting anyone with physical incapacity to extend the TCA’s jurisdictional notice period, creating uncertainty and increased liability for public entities. This Court should reject the Court of Appeals’ broad definition and clarify that “incapacity” must be narrowly construed.

1. The Court of Appeals Erred by Interpreting Incapacity in Light of the TCA’s Permitted Remedies.

In support of its broad definition of “incapacity,” the Court of Appeals stated that it “need not determine whether the claimant’s incapacity is mental or physical” because “[t]he TCA contemplates recovery for both physical and mental injury.” Op. ¶ 23. However, the permissible scope of recovery under the TCA is distinct from the question of incapacity for purposes of giving notice. The scope of recovery is governed by the TCA’s waiver provisions, which indicate that a TCA claimant may recover damages for both physical and mental injuries. *See, e.g.,*

NMSA 1978, §§ 41-4-9 & 41-4-10 (immunity waived for “liability for damages resulting from bodily injury, wrongful death, or property damage” in some medical negligence cases). Crucially, however, a claimant can recover such damages only after they have (1) satisfied jurisdictional pre-requisites to suit, such as timely notice, (2) established a statutory waiver of immunity, and (3) satisfied the elements of an underlying tort claim. *See* § 41-4-16(B); *Kreutzer v. Aldo Leopold High Sch.*, 2018-NMCA-005, ¶¶ 47-48, 409 P.3d 930 (waiver of immunity and elements of negligence claim are separate inquiries). Thus, a claimant must satisfy three layers of jurisdictional and substantive requirements before recovering traditional physical and mental tort damages. This structure protects the government by first weeding out potential claimants who cannot satisfy statutory requirements for notice and waiver, then permitting a smaller subset of claimants to seek tort damages.

The Court of Appeals used the scope of recovery (the final step in this process) to interpret the initial notice requirement, but this analysis is flawed for at least two reasons. First, the language of the waiver provisions, which permits recovery of “damages resulting from bodily injury,” bears no resemblance to the language of Section 41-4-16(A)-(B), which extends the notice period when a claimant is “incapacitated” from causing notice to be given. Thus, there is no textual indication that the phrase “incapacitated from giving the notice” should be

defined to include the full scope of tort recoveries permitted by the waiver provisions. To the contrary, as discussed above, the notice provision only permits an extension of time when a claimant is incapacitated from understanding their claim and obtaining an agent to give notice.

Second, logic does not support the use of available remedies to interpret a jurisdictional pre-condition to suit. The structure of the TCA permits recovery of traditional tort remedies by a narrow subset of claimants who have satisfied strict requirements pertaining to notice and waiver. The Court of Appeals' analysis turns this structure on its head by relaxing the initial, jurisdictional requirements so that virtually any claimant can seek an extension of the notice period. This structural shift undermines the legislative intent of Section 41-4-16 and works against the language of the statute.

2. The Court of Appeals Erred by Following Minnesota Law

The Court of Appeals also relied on Minnesota authority in support of its broad interpretation of Section 41-4-16(B). SVH respectfully submits that this was error because the Minnesota cases at issue are inconsistent with the language and goals of the New Mexico TCA.

In its Opinion, the Court of Appeals stated that Minnesota authority is persuasive because “[t]he tolling provision of Minnesota’s Tort Claims Act includes an exclusion from the period for giving notice that is virtually identical”

to Section 41-4-16(B). Op. ¶ 22. It is true that Minn. Stat. Ann. § 3.736, subdivision 5, contains the following language: “The time for giving the notice does not include the time during which the person injured is incapacitated by the injury from giving the notice.” However, when read as a whole, the Minnesota Tort Claims Act is not analogous to the TCA because the Minnesota Act permits the type of broad incapacity-based tolling that the New Mexico Legislature has rejected. Specifically, the Minnesota Act gives claimants 180 days to provide notice, and permits indefinite tolling during any period when “the person injured is incapacitated by the injury from giving the notice.” Minn. Stat. Ann. § 3.736, subd. 5.⁵ In addition, failure to give notice is not a jurisdictional defect under the Minnesota Act. *Id.*; *Naylor v. Minn. Daily*, 342 N.W.2d 632, 633-65 (Minn. 1984). Any interpretation of “incapacitated by the injury from giving notice” in the Minnesota Act must reflect the legislative goals underlying this liberal tolling scheme. *Cf. Gutierrez*, 2023-NMSC-002, ¶ 22 (ambiguous language interpreted based on legislative intent). In contrast, any analysis of similar language in the TCA must reflect the strict, jurisdictional tolling scheme favored by the New Mexico Legislature. *See id.*; *Van Buskirk*, 2022-NMCA-040, ¶ 16 (words interpreted in context); *Regents of Univ. of N.M.*, 1998-NMSC-020, ¶ 28 (statute

⁵ The Minnesota Act also is distinguishable because the notice provision states that plaintiffs “shall present . . . a notice” to the governmental entity. Minn. Stat. Ann. § 3.736, subd. 5. In contrast, as discussed above, the TCA states that a plaintiff shall “cause [the notice] to be presented,” which contemplates service by an agent.

construed as a whole). The Court of Appeals erred by treating the statutes as “virtually identical” under these circumstances.

Plaintiff may argue that the Court should overlook this issue because the Minnesota Supreme Court cases discussed by the Court of Appeals analyzed an old version of Minnesota’s Municipal Notice of Claim statute, which pre-dated the Minnesota Tort Claims Act and which resembles the modern New Mexico TCA. *See Wibstad v. City of Hopkins*, 190 N.W.2d 125 (Minn. 1971); *Hestbeck v. Hennepin Cnty.*, 212 N.W.2d 361 (Minn. 1973). Regardless of any similarity between the two statutes, however, the Minnesota Supreme Court’s analysis should be rejected because it is specific to Minnesota and inapplicable in New Mexico.

In *Wibstad*, the court analyzed a provision that permitted a 90-day extension of the municipal notice period when the injured party is “incapacitated by the injury from giving the notice.” 190 N.W.2d at 126. The court interpreted this provision in conjunction with the language of Minnesota municipal charters that had pre-dated the municipal notice statute at issue. *Id.* at 127. In particular, the court explained that municipal charters had contained an exception to the notice requirement “when the person injured was ‘bereft of reason’ because of the accident.” *Id.* Minnesota courts had interpreted “bereft of reason” to mean that a claimant’s “mental operations were so impaired . . . as to disqualify him from

attending to, or giving needful directions in respect to the notice” during the period of claimed incapacity. *Id.*

In light of this history, the *Wibstad* court concluded that the Minnesota legislature would have used the phrase “bereft of reason” in the statute at issue if it had intended to limit the statute’s incapacity provision to mental incapacity. *Id.* Because the statute did not include the familiar “bereft of reason” language, the court concluded that the legislature had intended a broader definition of incapacity focused on whether the “plaintiff was himself physically unable as a result of the injury to investigate and otherwise prepare and give legally sufficient notice of claim, and, if so, whether the plaintiff was during the same time unable to cause another to do it for him.” *Id.*

Two years later, in *Hestbeck*, the Minnesota Supreme Court clarified that the statutory definition of incapacity was fact specific, requiring case-by-base analysis of the claimant’s physical and mental abilities. 212 N.W.2d at 366. It concluded that “the test for determining incapacity under the statute ought to be what would be required of a reasonably prudent claimant under the same or similar circumstances.” *Id.* This analysis apparently turned on the unique facts of the case. The claimant in *Hestbeck*, who wished to sue his medical provider, had been hospitalized for the entire notice period but “could have physically hired someone to investigate and prepare a legally sufficient [and timely] notice of claim.” *Id.* The

court concluded that it would be “unreasonable . . . to require a patient while under the care and treatment of a municipal hospital” to serve notice of a claim against the same hospital, upon which “he must depend to continue to serve him.” *Id.*

Neither *Wibstad* nor *Hestbeck* is persuasive in the context of the New Mexico TCA. The analysis in *Wibstad* turned on (1) the prevalence of the phrase “bereft of reason” in municipal charters, which formed a backdrop to the statutory notice provision at issue, and (2) the court’s determination that the legislature would have used “bereft of reason” if it had intended to limit the Minnesota statute’s incapacity provision to mental incapacity. 190 N.W.2d at 127. Here, in contrast, there is no indication that the TCA was enacted against a backdrop of municipal charter provisions, nor is there any New Mexico caselaw interpreting the phrase “bereft of reason.” Thus, the TCA must be interpreted based on the plain meaning of its own words—when viewed in context—and not based on the Minnesota legislature’s rejection of pre-existing language found in Minnesota’s municipal charters.

The Court of Appeals also erred by adopting the broad, fact-specific incapacity inquiry favored by *Hestbeck*. See Op. ¶ 23. As an initial matter, it does not appear that the *Hestbeck* test has been cited, referenced, or applied in any subsequent Minnesota caselaw. This is unsurprising, because the test requires cumbersome, fact-based discovery and briefing that runs contrary to the basic goal

of a governmental notice provision: promoting the predictable and efficient resolution of claims. Here, for example, the adoption of an expansive, fact-based incapacity standard creates an end-run around the TCA's 90-day notice provision, encourages expensive and protracted litigation regarding incapacity, and interferes with the early settlement process. Moreover, *Hestbeck* created a standard designed to address the unfairness of requiring a hospitalized claimant to give notice to the hospital while still under its care. In the current case, however, Plaintiff was discharged from the hospital months before the notice period expired. In addition, the situation in *Hestbeck* is unlikely to repeat itself in New Mexico because the TCA contains a 90-day notice period (not a 30-day period, as in *Hestbeck*).

In sum, the TCA should be interpreted based on its plain language and structure. If this Court finds ambiguity, it should look to the legislative intent underlying the TCA's notice provision. These factors indicate that a potential claimant is "incapacitated from giving the notice" only when they are unable to (1) understand the factual basis for a claim, (2) decide to pursue the claim, and (3) communicate that desire to an agent. There is no need to adopt standards from isolated and outdated Minnesota cases when the statute is clear under New Mexico law.

C. The Court of Appeals Adopted an Overly-Broad and Vague Standard for When Jurisdictional Questions Are “Intertwined” with the Merits.

Preservation. SVH addressed the standard for “intertwined” jurisdictional facts in the Court of Appeals. AB 14-16. The question of whether SVH’s motions to dismiss should be converted to summary judgment motions also was addressed in District Court briefing. [RP1:120-22; RP2:260; RP3:661-62; RP3:715-16; RP4:810-11]

Discussion. The Court of Appeals compounded its error by adopting a liberal standard for converting Rule 1-012(B)(1) motions into summary judgment motions. This standard modifies the federal law on which it purports to rely and weakens district courts’ authority to efficiently resolve jurisdictional questions. This Court should clarify that (1) the federal standard governs the conversion of Rule 1-012(B)(1) motions, and (2) that standard does not require conversion of SVH’s Amended Motion into a motion for summary judgment because the question of Plaintiff’s incapacity is not intertwined with the merits of her negligence claims.

1. New Mexico Has Adopted the Federal Standard

A motion to dismiss for lack of subject matter jurisdiction under Rule 1-012(B)(1) can be facial or factual. *South v. Lujan*, 2014-NMCA-109, ¶ 8, 336 P.3d 1000. “In reviewing a facial attack on the complaint, a district court must accept the allegations in the complaint as true.” *Id.* (quoting *Holt v United States*, 46 F.3d

1000, 1002-03 (10th Cir. 1995)). In contrast, a party mounting a factual attack, such as SVH, “may go beyond allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction depends.” *Id.* (quoting *Holt*, 46 F.3d at 1002-03).

In *South v. Lujan*, the Court of Appeals considered the proper procedure for resolving fact-based motions to dismiss under Rule 1-012(B)(1). 2014-NMCA-109, ¶¶ 8-9. Following *Holt v. United States*, 46 F.3d 1000 (10th Cir. 1995), the court explained that a district court has “wide discretion” to consider evidence in connection with factual challenges to jurisdiction, and that the district court’s reference to such evidence generally does not convert a motion to dismiss into one for summary judgment. *Id.* ¶ 9. This rule is “based on the fundamental nature of jurisdictional questions” and the principle that a district court is “free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Id.* ¶ 8 (quotes omitted). However, a factual Rule 1-012(B)(1) motion will be converted to a summary judgment motion when “resolution of the jurisdictional question is intertwined with the merits of the case.” *Id.* (quoting *Holt*, 46 F.3d at 1003).

Although *South* adopted the federal “intertwined with the merits” standard, it did not elaborate on the meaning of that phrase. However, Tenth Circuit caselaw provides insight on this issue. Under Tenth Circuit law, the “general rule” is that “reliance on evidence outside the pleadings in addressing [a Rule 12(B)(1)]

motion” does not convert the motion into one for summary judgment. *Sizova v. Nat’l Inst. of Standards & Tech.*, 282 F.3d 1320, 1324 (10th Cir. 2002). Conversion of such a motion based on the intertwined nature of jurisdiction and the merits is “an exception to this general rule.” *Id.*

When deciding whether jurisdictional and substantive issues are intertwined, early Tenth Circuit cases looked to whether the statute creating the substantive right also created jurisdiction. *Holt*, 46 F.3d at 1003 (jurisdiction and merits not intertwined because Flood Control Act governed jurisdiction whereas Federal Tort Claims Act (“FTCA”) governed merits); *Wheeler v. Hurdman*, 825 F.2d 257, 259 (10th Cir. 1987) (“When subject matter jurisdiction is dependent upon the same statute which provides the substantive claim in the case, the jurisdictional claim and the merits are considered to be intertwined.”). However, subsequent cases have clarified that the real question is not whether the same statute governs jurisdiction and the merits. *Pringle v. United States*, 208 F.3d 1220, 1223 (10th Cir. 2000). Instead, the “underlying issue” when conducting the “intertwined” inquiry is whether “resolution of the jurisdictional question **requires resolution of an aspect of the substantive claim.**” *Id.* (emphasis added). In other words, jurisdiction is intertwined with the merits when a court “cannot resolve a jurisdictional question without addressing the merits of the claim.” *Baker v. USD 229 Blue Valley*, 979 F.3d 866, 874 n.5 (10th Cir. 2020). *See also Knellinger v. Young*, 134 F.4th 1034,

1041-42 (10th Cir. 2025) (quoting Wright and Miller with approval for proposition that summary judgment standard should apply when “a decision of the jurisdictional issue requires a ruling on the underlying substantive merits of the case”).

When applying this standard, federal courts have found jurisdiction and the merits to be intertwined when the two “completely overlap” or are “inextricably intertwined.” *See Knellinger*, 134 F.4th at 1041-42 (“injury in fact” element of standing completely overlapped with merits of claim under Takings Clause; both turned on whether plaintiff owned property); *Pringle*, 208 F.3d at 1222-24 & n.3 (merits claim that defendants negligently ejected plaintiff from military club was intertwined with jurisdiction; jurisdictional inquiry required factual findings on “appellant’s duty status, whether his injuries occurred on a military base, the type of activity appellant engaged in when the injury occurred, and whether there was direct military control over that activity”). In contrast, courts have held that jurisdictional questions relating to notice, timeliness, and exhaustion under the FTCA are conceptually separate from—and, therefore, not intertwined with—substantive FTCA claims. *See, e.g., Gabriel v. United States*, 683 F. App’x 671, 673-74 (10th Cir. 2017) (failure to exhaust under FTCA was not intertwined with substantive FTCA claim; “the exhaustion issue did not require the district court to decide substantive aspects of the tort claims”); *Cizek v. United States*, 953 F.2d

1232, 1233 (10th Cir. 1992) (whether plaintiff satisfied the FTCA’s notice provision was not intertwined with merits).

Significantly, the Tenth Circuit’s test does not treat questions as intertwined simply because they involve some amount of factual overlap. In *Holt*, for example, the plaintiffs claimed that the government had negligently created an ice slick that caused a car accident. The jurisdictional question required the court to determine whether (1) water that created the ice had been released for flood-control purposes, and (2) a sufficient “nexus” existed between flood-control activities and the alleged injuries. *Id.* at 1003-04. This factual inquiry—which turned on what the government did and whether those actions caused the alleged injury—involved significant overlap with the duty/breach and causation elements of a negligence claim. However, because the jurisdictional issue arose under a flood control statute and was conceptually distinct from the negligence claim, the two were not intertwined. *See id.* at 1003.

Similarly, in *Davis ex rel. Davis v. United States*, 343 F.3d 1281 (10th Cir. 2003), Black members of the Seminole Tribe claimed that the BIA wrongfully denied them “CDIB cards.” The United States moved to dismiss because the representative plaintiffs in the class action had not followed proper procedures for seeking CDIB cards from the BIA and, therefore, had failed to exhaust. *Id.* at 1295-96 (plaintiffs alleged that BIA failed to act on card applications but did not

properly appeal or request that BIA take action). Again, there is some factual overlap between the plaintiffs' actions in seeking BIA approval of their applications (the jurisdictional issue) and the merits claim that the BIA improperly denied such applications. Nevertheless, the court held that the two were not intertwined because "[t]he substantive issue . . . is whether Plaintiffs were improperly denied CDIB cards, not whether a particular plaintiff has exhausted administrative remedies." *Id.* at 1296. In support of this conclusion, the court cited *Sizova* for the proposition that exhaustion is "simply not an aspect of a substantive claim of discrimination"—even when the facts underlying the alleged discrimination involve the same agency application process as the exhaustion inquiry. *See id.*

2. The Court of Appeals' Opinion Waters Down the Federal Standard

Although the Court of Appeals purported to follow federal authority, it adopted a watered-down version of the federal standard that requires conversion of a Rule 1-012(B)(1) motion any time "resolution of the jurisdictional issue requires resolving factual disputes that **bear on** both jurisdiction and the merits of the underlying claim." Op. ¶ 10 (emphasis added). SVH has not located New Mexico authority interpreting "bear on." The Court of Appeals seems to define the phrase as meaning "relevant to." Op. ¶ 14. This is consistent with federal authority that uses "bear on" to define the scope of relevant evidence under Fed. R. Civ. P. 26.

See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350-51 (1978) (“relevant to the subject matter involved in the pending action,” as used in prior version of Rule 26, encompasses “any matter that bears on . . . any issue that is or may be in the case”). Similarly, Merriam-Webster defines “bear on” as “to apply or relate to.” *See Bear On*, Merriam-Webster, available at <https://www.merriam-webster.com/dictionary/bear%20on>.

In light of these authorities, SVH submits that “bear on” should be defined as “relate to” or “be relevant to.” Thus, the Court of Appeals’ Opinion requires conversion of a Rule 1-012(B)(1) motion any time resolution of the jurisdictional issue “requires resolving factual disputes that **[relate to or are relevant to]** both the jurisdiction and the merits of the underlying claim.” Op. ¶ 10. In contrast, the stricter federal standard only permits conversion when the jurisdictional question “requires resolution of an aspect of the substantive claim,” *Pringle*, 208 F.3d at 1223, *i.e.*, when a court “cannot resolve a jurisdictional question without addressing the merits of the claim.” *Baker*, 979 F.3d at 874 n.5.

The watering down of the federal standard has practical repercussions. In this case, for example, jurisdiction turns on whether Plaintiff can satisfy the incapacity exception to the TCA’s notice provision. Under the federal standard, Plaintiff’s capacity to understand a potential claim and decide to pursue the claim would not require conversion of the motion to dismiss because it does not “require

resolution” of any “aspect of the substantive [medical negligence] claim[s].” To the contrary, it is quite possible to determine whether a plaintiff is able to understand and communicate the basis for her claim without resolving duty, breach, causation, or damages. As in the federal cases discussed above, the incapacity tolling inquiry is conceptually distinct from negligence; the two are not inherently intertwined or completely overlapping and should not be treated as such.

Under the Court of Appeals’ standard, however, jurisdiction is intertwined with the merits of this case because Plaintiff’s capacity “depends on **facts that are relevant to** [Plaintiff’s] substantive claim of negligence, including her damages.” Op. ¶ 14 (emphasis added). Under this relevance standard, a plaintiff’s capacity to give notice under Section 41-4-16(B) will always be intertwined with the merits of a claim under the TCA, because incapacity will always involve facts that are tangentially related to emotional, mental, and/or physical damages. *See* § 41-4-16(B). Thus, plaintiffs can avoid dismissal of TCA claims on jurisdictional grounds simply by arguing that they were “incapacitated,” which will (1) convert a Rule 1-012(B)(1) motion into one for summary judgment, (2) deprive the district court of its power to make jurisdictional findings, and (3) interfere with timely resolution of jurisdictionally deficient claims by referring all questions of capacity to the jury. This subverts the goals of the TCA’s notice provision, as it creates a

system in which plaintiffs can provide late notice then embroil the government in lengthy and expensive litigation of incapacity.

The Court of Appeals' standard also will have repercussions outside the context of TCA claims. SVH has identified several Tribal immunity cases in which the jurisdictional inquiry involves factual questions that are relevant to the plaintiffs' substantive claims. In *Haynes v. Lujan*, No. A-1-CA-38014, 2021 WL 3113045 (Ct. App. July 22, 2021), for example, the plaintiff brought substantive claims for NMHRA discrimination, wrongful termination, and tortious interference with contract against Tribal officials arising from her employment as a Tribal court administrator. *Id.* at *1. The district court dismissed under Rule 1-012(B)(1), based on factual findings regarding the parties' contractual relationship with the Tribe, the employment status and job duties of defendants, and whether plaintiff's claims arose from a defendant's employment with the Tribe. *Id.* at *1-*2. These facts appear to overlap with the plaintiff's substantive claims. Specifically, whether the plaintiff had a contract with the Tribe is relevant to tortious interference with contract. Likewise, fact finding regarding defendants' employment and job duties is relevant to the wrongful termination claim. *See Bourgeois v. Horizon Healthcare Corp.*, 117 N.M. 434, ¶¶ 11-12 (N.M. 1994). Nevertheless, the appellate court affirmed the dismissal of the plaintiff's claims under Rule 1-12(B)(1). *Id.* at *2-*6. Under the Court of Appeals' new "bears on" standard,

however, the district court would be forced to convert the motion to dismiss into one for summary judgment, potentially forcing the Tribe and/or its officials to litigate jurisdiction until trial. *See also Trujillo v. Foster*, No. A-1-CA-40743, 2024 WL 1740756 (Ct. App. Apr. 23, 2024) (claim for wrongful discharge against Tribal supervisors; dismissal under Rule 1-012(B)(1) affirmed despite jurisdictional fact finding regarding whether defendants acted in official capacity and in scope of employment, which is relevant to merits).

SVH respectfully submits that the Court of Appeals erred by adopting a broad conversion standard that deviates from federal authority, deprives the district court of jurisdictional fact-finding powers, and prevents dismissal of governmental (and Tribal) entities on jurisdictional grounds prior to the conclusion of summary judgment briefing.

D. The District Court’s Judgment Should Be Affirmed.

The District Court in this matter properly decided SVH’s Amended Motion under Rule 1-012(B)(1) because, as explained above, Plaintiff’s capacity to understand the basis for her claim and cause timely notice to be given under Section 41-4-16(B) is not “intertwined” with the merits under the federal standard adopted by *South v. Lujan*. [RP8:1829-30]

In addition, the District Court properly determined that “incapacity,” as used in Section 41-4-16(B), turns on an individual’s ability to understand and make

decisions regarding a potential claim. [*See* 10/31/22 Tr. at 2:58:08-2:58:17, 2:58:26-2:58:40] After considering multiple rounds of briefing and evidence, the court determined that Plaintiff was not incapacitated from giving notice based on reasonable, well-supposed findings of fact. [*See* 10/31/22 Tr. at 2:59:57-3:04:02] This decision was both legally correct and supported by substantial evidence—namely, the testimony of Nurses Ramos and Ramirez, which established that Plaintiff was able to understand and make decisions regarding her potential medical negligence claims during the 90-day notice period. *Allen*, 2005-NMCA-114, ¶¶ 13, 15 (“Substantial evidence” standard requires “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”; appellate courts “resolve all disputed facts and indulge all reasonable inferences in favor of trial court’s findings”). Accordingly, the District Court’s decision should be affirmed, and Plaintiff’s claims should be dismissed.

V. CONCLUSION

The Court of Appeals erred by (1) adopting an incapacity standard that permits tolling of the TCA’s notice provision based on either physical or mental incapacity, and (2) adopting an overly broad standard for converting factual Rule 1-012(B)(1) motions into motions for summary judgment. These errors undermine the TCA’s language, structure, and legislative intent.

Accordingly, SVH requests that this Court reverse the Court of Appeals on

all grounds. Specifically, SVH asks the Court to clarify that incapacity tolling applies under the TCA only when a claimant is mentally unable to understand the factual basis for their claim and communicate a decision to pursue the claim, which has not been established in this case. In addition, SVH submits that this Court should clarify that the federal standard—as set forth in *Pringle* and *Baker*—governs the conversion of Rule 1-012(B)(1) motions into summary judgment motions. Finally, SVH respectfully requests that the Court affirm the District Court’s dismissal of Plaintiff’s claims based on Plaintiff’s failure to satisfy the TCA’s notice requirement.

Statement Regarding Oral Argument

Oral argument is requested because this case involves complex issues of first impression.

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Certificate of Service

I HEREBY CERTIFY that the foregoing pleading was filed via “Odyssey File and Serve” on the 2nd day of January, 2026, which caused all counsel of record to be served by electronic means. I hereby further certify that a true and correct copy of the foregoing was also served via e-mail this 2nd day of January, 2026, as follows:

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