



# Montano v. Frezza, 393 P.3d 700 (NM 2017)

Topics Covered: Professional Liability, Tort Reform

## Outcome: Very Favorable

### Issue

The issue in this case was whether the law of Texas or the law of New Mexico should apply to a malpractice suit brought by a New Mexico patient in a New Mexico court, when the medical procedure giving rise to the alleged malpractice was performed by a Texas physician within the State of Texas.

### AMA Interest

Medical liability reform is the AMA's top legislative priority.

### Case Summary

Kimberly Montano, a New Mexico resident, traveled to Lubbock Texas to undergo bariatric surgery by Eldo Frezza, MD, a Texas-based physician. For approximately six years, Ms. Montano traveled to Lubbock for follow-up care and treatment by Dr. Frezza for complications arising from the surgery. Eventually, another physician diagnosed Ms. Montano with gastrointestinal bleeding caused by an "eroding permanent suture", and he performed corrective surgery.

Ms. Montano sued Dr. Frezza for medical negligence in the District Court of Bernalillo County, New Mexico. Dr. Frezza filed two motions for dismissal. One motion asserted that New Mexico lacked personal jurisdiction over him. In the other motion, he argued that as a Texas public employee, he was immune from suit under the Texas Tort Claims Act (TTCA).

The district court ruled that Dr. Frezza had sufficient contacts with New Mexico to allow the New Mexico courts to assert personal jurisdiction over him, and thus it denied Dr. Frezza's first motion to dismiss. The district court also denied Dr. Frezza's motion to dismiss under TTCA immunity. Dr. Frezza filed an interlocutory appeal of the denial to the New Mexico Court of Appeals.

The New Mexico Court of Appeals concluded that New Mexico law should apply, and therefore the trial court had properly denied the motion to dismiss based on TTCA immunity. Dr. Frezza appealed to the New Mexico Supreme Court.

On March 13, 2017, by a split decision, the New Mexico Supreme Court reversed and ordered the case dismissed. The majority held that the usual rule was to respect a neighboring state's law, and there was no unusual or strong public policy applicable to this case which would justify deviation from that rule. The majority also found, as a factor favoring reversal, that dishonoring the TTCA could impair the ability of New Mexicans to obtain needed health care from Texas

hospitals and physicians. The dissent argued that New Mexico has an interest in ensuring that its citizens can recover for tort injuries, and that interest should have justified not following the TTCA.

### **Litigation Center Involvement**

The Litigation Center, along with the Texas Medical Association and the New Mexico Medical Society, filed an *amicus* brief in support of the application of Texas law.

New Mexico Supreme Court brief