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Workers' Compensation Law: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Laboratory

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WORKERS' COMPENSATION LAW: A Clinical Psychologist is Qualified to Give Expert Medical Testimony Regarding Causation: *Madrid v. University of California, d/b/a Los Alamos National Laboratory*

I. INTRODUCTION

The New Mexico Supreme Court, in *Madrid v. University of California, d/b/a Los Alamos National Laboratory, et al.*, held that a clinical psychologist was qualified to give expert medical testimony within the meaning of the Workers' Compensation Act regarding the causal connection between the employee's disability and her employment.[1] Although the *Madrid* court's decision specifically authorized only psychologists to give such expert testimony as to causation, it implicitly stated that all qualified health care providers were to be viewed as qualified to give causation testimony.[2]

This Note first discusses the development of New Mexico case law concerning the role of the psychologist in the workers' compensation system. The Note then reviews the New Mexico Supreme Court's reasoning in *Madrid*. Finally, this Note considers the ramifications of *Madrid* on workers' compensation law in New Mexico.

II. STATEMENT OF THE CASE

A. Facts

Early in 1986, Aurelia Madrid filed a workers' compensation claim against her employer, the University of California, d/b/a Los Alamos National Laboratory, for a mental disability which she claimed was work-related.[3] Plaintiff had offered, and the trial court had received, the testimony of her treating clinical psychologist in order to establish the causal connection then required by statute.[4] After the testimony had been given, the trial court ruled that the plaintiff's psychologist was not qualified to give an opinion concerning the causal connection between Ms. Madrid's disability and her employment.[5] The trial court's exclusion of the psychologist's evidence came as a direct result of the New

1. 105 N.M. 715, 737 P.2d 74 (1987).
2. *Id.* at 716, 737 P.2d at 76.
3. *Id.* at 715, 737 P.2d at 75.
4. *Id.* at 716, 737 P.2d at 76. N.M. STAT. ANN. § 52-1-28(b) provided:
> In all cases where the defendants deny that an alleged disability is a natural and direct result of the accident, the workman must establish that causal connection as a medical probability by expert medical testimony. No award of compensation shall be based on speculation or on expert testimony that as a medical possibility the causal connection exists.

N.M. Stat. Ann. § 52-1-28(B) (1978 Comp.)
5. 105 N.M. at 715, 737 P.2d at 74.

Mexico Court of Appeals opinion in *Fierro v. Stanley's Hardware*,[6] which had been filed in the time between trial and judgment in *Madrid*. The *Fierro* court held that "expert medical testimony" meant testimony by one licensed to practice medicine.[7] Psychologists were not permitted to practice medicine under the New Mexico licensing laws.[8] *Fierro*, therefore, compelled the ruling by the *Madrid* trial court that Ms. Madrid's witness was not qualified to give expert medical testimony under the Workmans' Compensation Act.[9] The trial court excluded the testimony of plaintiff's treating psychologist.[10] Without her psychologist's testimony, Ms. Madrid was unable to establish the requisite causal connection for her workers' compensation action.[11] The trial court subsequently dismissed Ms. Madrid's claim and then denied her motion to reopen the case in order to receive additional evidence.[12]

B. Procedure

Plaintiff appealed the trial court's decision and the court of appeals, finding *Fierro* controlling, affirmed the lower court's dismissal of Ms. Madrid's suit.[13] The New Mexico Supreme Court granted certiorari.[14] The main issue on appeal was whether Section 52-1-28(B) precluded a clinical psychologist from testifying in order to establish the causal connection between a work-related accident and the worker's mental disability.[15] The New Mexico Supreme Court affirmed the court of appeals decision in a memorandum opinion filed November 24, 1986.[16] Ms. Madrid requested a rehearing on this matter, which the supreme court granted.[17] The supreme court then withdrew its previous November 24, 1986, opinion and filed a substitute on March 18, 1987.[18] The supreme court reversed itself in this substitute opinion, stating that the phrase "expert medical tesitmony" under the Workmans' Compensation Act did not limit expert testimony as to the

6. 104 N.M. 401, 722 P.2d 653 (1985). The *Fierro* case dealt with both aspects of the Subsequent Injury Fund and the psychologist as an expert witness as to causation in this jurisdiction. The case went to the New Mexico Supreme Court on certiorari as to the Subsequent Injury Fund issue only. (104 N.M. 50, 716 P.2d 241 (1986)). The Supreme Court reversed in part and remanded to the New Mexico Court of Appeals. The court of appeals then affirmed the trial court (104 N.M. 411, 722 P.2d 662 (Ct. App. 1986)). Since all of these appeals dealt with the Subsequent Injury Fund aspect of the *Fierro* case, the court of appeals' original holding regarding the psychologist as an expert witness as to causation was still valid.

7. *Id.* at 410, 727 P.2d at 661.

8. *Id.* (citing N.M. STAT. ANN. § 61-9-17 (Repl. Pamp. 1981 and Cum. Supp. 1984).

9. *Madrid*, 105 N.M. at 716, 737 P.2d at 76.

10. *Id.*

11. *Id.* at 715-16, 737 P.2d at 75-76.

12. *Id.*

13. *Id.* at 716, 737 P.2d at 76.

14. *Id.*

15. *Id.*

16. 26 N.M. BAR BULL., 113 (Feb. 5, 1987). The supreme court set forth its decision in a 3-2 opinion. Justice Stowers wrote the majority opinion and Justices Riordan and Traub concurred. Justice Walters wrote a dissent, with which Justice Sosa concurred.

17. 26 N.M. BAR BULL. 377 (Apr. 23, 1987).

18. *Id.* This substitute Memorandum reflected another 3-2 decisional split. Justice Walters wrote the majority opinion and Justices Sosa and Ransom concurred. Justice Stowers and Judge Traub dissented without opinion.

causal connection between disability and employment to licensed physicians.[19] The court then held that whether a health care provider was competent to present medical opinion evidence as to causation in a workmans' compensation case depended only upon his qualifications as an expert witness.[20] This decision represented a change in attitude as to the role of health care providers not technically licensed to practice medicine in New Mexico.

III. HISTORICAL PERSPECTIVE

A. *Pre-*Fierro: *The New Mexico judicial system generally recognized psychologists as expert medical witnesses in every area but causation.*

Psychologists were traditionally deferred to by the judicial branch in order to assist it in determining issues and providing evidence, as it was generally recognized that a plaintiff's psychological injuries were as valid as his physical ones.[21] For this reason, psychologists in this jurisdiction were already accepted as "expert witnesses" for the purpose of establishing matters within their area of expertise.[22] New Mexico allowed expert psychological testimony in virtually all types of cases.[23] Such psychological testimony, however, could not be used to establish causation in workmans' compensation cases.[24] In other workmans' compensation jurisdictions where expert testimony on causation was required (but where there was apparently no statute requiring that such testimony be "expert *medical* testimony"), psychologists were allowed to testify as to causation when the causation was within their area of expertise.[25]

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19. *Madrid*, 105 N.M. at 716, 737 P.2d at 76.

20. *Id.* The supreme court held in *Madrid* that:

> [The] witness, who had been associate professor of mental health at the school of nursing at the University of New Mexico, had been assistant chief and acting chief psychologist at a United States Veterans Administration hospital, and had extensive 30-year work experience directly related to prevention, alleviation, and cure of mental diseases, was qualified to present medical opinion evidence on the issue of whether a worker's mental disability was work related.

Id. at 719, 737 P.2d at 79.

21. *Fierro*, 104 N.M. at 410, 722 P.2d at 661.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* Arizona's workers' compensation law is of particular interest when studying New Mexico workers compensation law, as the New Mexico system had been patterned substantially after that now employed in Arizona. Hooper v. Industrial Comm'n of Arizona, 126 Ariz. 586, 617 P.2d 538 (Ct. App. 1980) states:

> A hearing officer incorrectly refused to consider testimony of a licensed clinical psychologist on the question of worker's compensation claimant's mental condition as relating to an industrial injury.
>
> A licensed clinical psychologist is competent to testify as to the causal relationship between an industrial injury and a mental condition which falls within the scope of practice of a licensed psychologist under statute; since by statute psychologists are entitled to diagnose, treat, and correct mental conditions within their field, they are also competent to testify regarding causes of such conditions.

This decision expressly overruled Bilbrey v. Industrial Comm'n, 27 Ariz. App. 473, 556 P.2d 27

In New Mexico, the workmans' compensation statute required that causation be established by expert medical testimony.[26] While the Workmans' Compensation Act was remedial legislation and had to be liberally construed to affect its purpose, [27]this liberal construction applied only to the law, not to the evidence offered in support of the claim.[28] Therefore, the claimant was not relieved of the burden of establishing the right to compensation by a preponderance of the evidence.[29] The court could not award compensation where such requisite proof was absent.[30] In order to justify an award of workmans' compensation benefits, it was necessary that the worker establish some causal relationship between the accident and the injury.[31] The jury was not allowed to arrive at a finding of causation on mere speculation.[32]

The New Mexico courts required that a workmans' compensation claimant establish a causal connection between the accident and the injury complained of as a medical probability.[33] It was insufficient to establish the causal connection as a mere medical possibility.[34] In a 1963 decision, the New Mexico Supreme Court sought to extinguish any ambiguity as to the standard of proof necessary to establish causation in a workmans' compensation case.[35] The court held that the statute requiring expert medical testimony to establish causation was clear and unambiguous.[36] The requirement was not that the requisite causation be established by direct and uncontroverted evidence, but rather as a medical probability.[37] This required opinion evidence from a medical expert.[38] Therefore, where the causal connection was denied by the employer, the claimant had to present expert medical testimony to prove that the causal connection existed as a medical probability.[39] The New Mexico Supreme Court then held in 1965 that

(Ct. App. 1976), in which the Court of Appeals of Arizona held that in a proceeding before the Industrial Commission, an opinion as to whether the claimant continued to suffer emotional consequences constituted a medical diagnosis which could only be provided by expert medical testimony and not by testimony of a licensed clinical psychologist. *See also* Madison Granite Co. v. Industrial Comm'n of Arizona, 138 Ariz. 573, 676 P.2d 1 (Ct. App. 1983); Sandow v. Weyerhauser Co., 252 Or. 277, 449 P.2d 426 (1969); Busby v. Martin, 166 So.2d 660 (La. App. 1964).

26. N.M. STAT. ANN. § 52-1-28(B) (1978 Comp.).

27. Anaya v. City of Santa Fe, 80 N.M. 54, 451 P.2d 303 (1969).

28. *Madrid*, 105 N.M. at 716, 737 P.2d at 76.

29. *Id.*

30. Mascarenas v. Kennedy, 74 N.M. 665, 397 P.2d 312 (1964).

31. *Madrid*, 105 N.M. at 716, 737 P.2d at 76.

32. *Id.*

33. Gilbert v. E.B. Law and Son, 60 N.M. 101, 287 P.2d 992 (1955).

34. Montano v. Saavedra, 70 N.M. 332, 373 P.2d 824 (1962). *See also* Elsea v. Broome Furniture Co., 47 N.M. 356, 143 P.2d 572 (1943). The New Mexico Supreme Court held that in a workmans' compensation case where the claimant was attempting to show the causal connection between an epileptic condition and his injury, the expert medical testimony that the condition was probably caused by the injury was proper. When such a conclusion was based upon the claimant's state of health, factors such as his health history and the evidence of his head injury were exact enough to justify submitting the issue to the jury.

35. Yates v. Mathews, 71 N.M. 451, 379 P.2d 441 (1963).

36. *Id.* at 453, 379 P.2d at 443.

37. *Id. See also* White v. Valley Land Co., 64 N.M. 9, 322 P.2d 707 (1957).

38. *Yates*, 71 N.M. at 453, 379 P.2d at 443.

39. *Id.*

it was proper to consider only medical testimony when determining whether the workmans' compensation claimant had carried the burden of proof on the issue of causal connection between the accident and the disability.[40] This was in view of the fact that absent the establishment of the causal connection as a medical probability, nonmedical evidence would be of no avail.[41] As of 1986, once a causal connection between a worker's injury and his disability had been established by expert medical testimony, the extent of the disability could then be established by nonmedical witnesses, including the worker himself.[42] Therefore, psychologists could testify as to damages only after the causal connection was established at trial by expert medical testimony.[43] In 1986 New Mexico officially recognized that workmans' compensation injuries could be not only physical but also mental.[44] Twenty years earlier, the courts held that such mental ailments as traumatic neurosis, when directly caused by an accident within the Workmans' Compensation Act, were fully compensable.[45] All of the cases recognizing psychological injuries under workmans' compensation law also involved accompanying physical injuries.[46] At the trials of these matters, expert medical testimony acceptable under Section 52-1-28(B) first established the physical injury causation.[47] Then the psychological testimony was accepted, not as a matter of causation but rather as a measure of damages.[48] Even in *Fierro*, there was an accompanying physical injury.[49]

In *Fierro*, after the court excluded the psychologist's causation testimony, claimant's medical doctors were still able to establish the causal chain between the physical injury and the accident.[50] Fierro's claim, therefore, survived.[51] Such was not the case in *Madrid*.[52] Ms. Madrid claimed no physical injury, only a psychological one.[53] When the psychologist's testimony was disallowed, Ms. Madrid was unable to establish causation.[54] The New Mexico courts held that causation could be established by a general medical practitioner.[55] The witness did not have to be a specialist in the plaintiff's alleged injuries.[56] Thus, a plaintiff's claimed eye injuries did not require the testimony of an opthamologist; a general practitioner's testimony was sufficient to establish causation.[57] Similarly,

40. Renfro v. San Juan Hosp., Inc., 75 N.M. 235, 240, 403 P.2d 681, 686 (1965).
41. *Id.*
42. Smith v. City of Albuquerque, 105 N.M. 125, 131, 729 P.2d 1379, 1385 (Ct. App. 1986.
43. *Id.*
44. *Id.* at 409, 722 P.2d 660.
45. Ross v. Sayers Well Servicing Co., 76 N.M. 321, 414 P.2d 679 (1966); Jenson v. United Perlite Corp., 76 N.M. 384, 415 P.2d 356 (1966).
46. *Fierro*, 104 N.M. 401, 722 P.2d 652.
47. *Id.* at 409, 722 P.2d 660.
48. *Id.* at 409, 722 P.2d 660.
49. *Id.* at 410, 722 P.2d 661.
50. *Id.* at 410, 722 P.2d 661.
51. *Id.*
52. *Madrid*, 105 N.M. 715, 737 P.2d at 75.
53. *Id.*
54. *Id.*
55. Haynes v. Hockenhull, 74 N.M. 329, 393 P.2d 444 (1964).
56. *Id.*
57. Frederick v. Younger Van Lines, 74 N.M. 320, 329, 393 P.2d 438, 447 (1964).

it was not necessary for the witness to be an expert internist to testify as to the causal connection between a myocardial infarction and claimant's work, even though testimony was readily available from a well-qualified specialist in internal medicine.[58] In 1982 the New Mexico Supreme Court specifically held that in workmans compensation cases, expert testimony on causation was not limited to specialists in the area of the injury.[59] Therefore, as to a psychological claim, because neither a psychologist nor a doctor without psychological training was permitted to testify as to causation, a psychiatrist was the only professional able to so testify prior to the *Madrid* ruling. *Fierro* previously stood for the proposition that psychologists were unable to testify as to causation in such causes of action.[60]

B. Fierro: New Mexico courts specifically prohibited psychologists from testifying as to causation under the Workmans' Compensation Act

Plaintiff Jimmy Fierro was injured when a battery exploded, causing severe injury to his left eye.[61] The plaintiff also claimed post-traumatic stress syndrome as a result of the accident and injury.[62] The issue in *Fierro* which affected Aurelia Madrid's case was whether a psychologist's testimony could establish the requisite causation between the accident and the claimant's psychological injuries.[63] The appellate issue was whether the psychologist was qualified to give expert medical testimony regarding causation.[64]

The section of the New Mexico code regulating medicine and surgery specifically excluded psychology from the practice of medicine.[65] In New Mexico, the Professional Psychologists Act regulated the practice of psychology.[66] A section of this Act also specifically prohibited a psychologist from the practice of medicine as defined by the laws of the state.[67] The *Fierro* court concluded that because the code expressly excluded the practice of psychology from the practice of medicine, a psychologist could not render "expert medical testimony" under Section 52-1-28(B).[68] The Court stated that while it might question the rationale for the limiting language of Section 52-1-28(B), that was a matter for the legislature to address and the courts must abide by the laws on the books at the time of the trial on the matter in question.[69]

58. Williams v. Skousen Constr. Co., 73 N.M. 271, 275, 387 P.2d 590, 594 (1983).

59. Turner v. New Mexico State Highway Dep't, 98 N.M. 256, 258, 648 P.2d 8, 10 (Ct. App. 1982).

60. *Fierro*, 104 N.M. 401, 409, 722 P.2d 652, 660.

61. *Id.*, 104 N.M. 401, 409, 722 P.2d 652, 660.

62. *Id.* at 402, 722 P.2d at 653.

63. *Id.*

64. *Id.* No claim was made that the psychologist was a doctor of medicine.

65. *Id.* N.M. STAT. ANN. § 61-6-16 (Repl. Pamp. 1981) provided as follows: "Sections 61-6-1 through 61-6-28 N.M.S.A. 1987 shall not apply to or affect: . . . F. the practice, as defined and limited under their respective licensing laws, of: . . . (6) psychology.

66. N.M. STAT. ANN. § 61-9-18 (Repl. Pamp. 1981 and Cum. Supp. 1985).

67. *Fierro*, 104 N.M. at 410, 722 P.2d at 661, citing N.M. STAT. ANN. § 61-9-17 (Repl. Pamp. 1981 and Cum. Supp. 1985).

68. *Fierro*, 104 N.M. at 410, 722 P.2d at 661.

69. *Id.* Because the trial court disallowed the psychologist's testimony, Mr. Fierro asked the New Mexico Court of Appeals for a new trial. *Id.* Appellant based his appeal upon the trial court's

IV. DISCUSSION AND ANALYSIS

A. *The* Madrid *Court's Reasoning*

After an extensive review of its initial decision in *Madrid*, the New Mexico Supreme Court reversed itself and held that a clinical psychologist was indeed qualified to testify as an expert medical witness regarding causation in workmans' compensation cases.[70] *Madrid* expanded the role of non-medical testimony in workmans' compensation cases.

1. Words in a statute are presumed to have been used in their ordinary sense and the Workmans' Compensation Act must be liberally construed.

The main point of the appeal was whether "expert medical testimony" (as required under the Workmans' Compensation Act) meant testimony only from one licensed to "practice medicine" under the New Mexico medical licensing laws.[71] The supreme court observed a basic rule of statutory construction; words were presumed to have been used by the legislature in their ordinary sense.[72] The word "medical" pertained to "medicine," which was "the science and art dealing with the maintenance of health and the prevention, alleviation, or cure of disease."[73] "Psychologic medicine" which, in the medical profession, meant "medicine in its relation to mental diseases," was included in the definition of "medicine."[74] In its commonly understood sense, licensed physicians were not the exclusive possessors of "medical knowledge."[75] The supreme court interpreted the phrase "expert medical testimony" as a description of the kind of testimony required; it did not describe the witness' educational or licensing requirements.[76]

The supreme court then referred to a second tenet of statutory construction, one that is specific to the New Mexico Workmans' Compensation Act: "The Act 'must be liberally construed to accomplish [the] beneficient purposes for which

refusal to grant a continuance in order to permit a psychiatrist to provide expert medical testimony as to causation. *Id.* The appellate court deemed this argument abandoned, however, as the appellee presented no argument or authority supporting that issue. *Id.* Also, the court stated that as denial of a motion for continuance is discretionary, in the absence of abuse an appellate court will not reverse. *Id.* Appellee demonstrated no such abuse, so the trial court's opinion was allowed to stand. *Id.* The supreme court granted certiorari, however, as to other issues. *Id.* The court heard these other issues (regarding the Subsequent Injury Fund) and ordered the case reversed and remanded for new findings. The court of appeals subsequently issued a second *Fierro* opinion. The initial opinion was not withdrawn and stood as precedent for the proposition that a psychologist could not establish the requisite causal connection for the purposes of the Workmans Compensation Act. *Id.*

70. *Madrid*, 105 N.M. 715, 737 P.2d 74.

71. *Id.* at 716, 737 P.2d at 75.

72. *Id.* (citing Bettini v. City of Las Cruces, 82 N.M. 633, 485 P.2d 967 (1971)). Words are given their ordinary and usual meaning unless the context indicates otherwise.

73. *Id.* (quoting Webster's Third New International Dictionary 1402 (1966)).

74. *Id.* (quoting Dorland's Illustrated Medical Dictionary 786 (26th Ed. 1981)).

75. *Id.* This category included midwives, microbiologists, etc. *Id.* Ph.D.s (rather than M.D.s) are regarded as the experts in some "medical" disciplines (such as biomechanics, which deals with the relationship between trauma and injury). *Id.*

76. *Id.*

it was enacted and . . . all reasonable doubts must be resolved in favor of employees.'"[77] Under these two tenets, the New Mexico Supreme Court held that when the legislature's position was unclear to the courts, the statute should be construed liberally.[78] There was no clear legislative intent to limit the qualifications of expert witnesses.[79] To do so would impose on the employee more burdensome proof requirements than the statute actually mandated.[80]

2. The Workmans' Compensation Act was sui generis.

The court went on to state that the Workmans' Compensation Act was separate from the Uniform Licensing Act and therefore should not be read *pari materia*.[81] To approach Section 52-1-28(B) as a limiting statute was inappropriate because it did not limit the right to workmans' compensation, but rather addressed a question of proof.[82] Notwithstanding that the Workmans' Compensation Act as a whole was *sui generis*, the specific section to be construed concerned an evidentiary matter.[83] The provision was more properly read in *pari materia* with the New Mexico Rules of Evidence.[84] The specific phrase in question concerned expert testimony and raised a question as to expertise; therefore it was to be read in *pari materia* with New Mexico Rule of Evidence 11-702.[85]

77. *Id.* (quoting Avila v. Pleasuretime Soda, Inc., 90 N.M. 707, 708, 568 P.2d 233, 234 (Ct. App. 1977)).

In Vallejos v. KNC, Inc., 105 N.M. 613, 735 P.2d 530 (1987), the supreme court (in an opinon published less than a month after *Madrid* held that a chiropractor could offer expert medical testimony to establish the causal connection between the employee's work-related accidental injury and the disability. *Id.* at 615, 735 P.2d at 532. The opinion in *Vallejos* was a unanimous one and referred to *Madrid* as the rationale for the decision. *Id.* at 614-15, 735 P.2d at 531-32.

Vallejos directly overruled Katz v. New Mexico Dep't. of Human Servs., 95 N.M. 530, 526 P.2d 39 (1981), and is instructive because *Vallejos* involved a situation analogous to *Madrid*. In *Katz* the claimant argued that "physician's services" included the services of a chiropractor for the purpose of Medicaid benefits under a joint federal/state program. The supreme court said, "Katz argues that, under state law, the practice of medicine includes chiropractor's services."

The practice of medicine is defined by § 61-6-16, N.M.S.A. 1978, expressly excludes chiropractice practices from the application of §§ 61-6-1 through 61-6-18, N.M.S.A. 1978. *Id.* at 532, 526 P.2d at 41.

78. *Madrid*, 105 N.M. at 716, 737 P.2d at 76.

79. *Id.* at 718, 737 P.2d at 77.

80. *Id.* at 716, 737 P.2d at 75.

81. *Id. See, e.g.*, Day v. Penitentiary of New Mexico, 58 N.M. 391, 271 P.2d 831 (1954) (provisions of the Workers' Compensation Act are not in *pari materia* with a statute granting the state penitentiary corporate powers, among them the right to sue and be sued, because the statutes are unrelated; one deals with corporate matters and the other is *sui generis* and exclusive).

82. *Madrid*, 105 N.M. at 718, 737 P.2d at 77.

83. *Id.* at 717, 737 P.2d at 76.

84. *Id.* SCRA 1986, Evid. R. 11-702 provides: "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise. *Madrid*, 105 N.M. at 717, 737 P.2d at 76, citing Beach v. Board of Adjustment, 73 Wash.2d 344, 438 P.2d 617 (1968)(zoning statute relating to certiorari read with general statute relating to certiorari); State Highway Comm'n v. Churchwell, 146 Mont. 52, 403 P.2d 751 (1965) (code section permitting inquiry into circumstances read in *pari materia* with code sectin relating to parole evidence); State ex rel. Day v. County Court of Platte County, 442 S.W.2d 178 (Mo. App. 1969)(statute governing judicial review of zoning decisions read in *pari materia* with Administrative Procedure and Review Act).

85. *Madrid*, 105 N.M. at 717, 737 P.2d at 76.

3. Expert witnesses may be qualified on foundations other than licensure

The supreme court interpreted the use of the word "or" in Rule 11-702 as indisputably recognizing that an expert witness may be qualified on foundations other than licensure.[86] Determination of a witness' expertise rested within the sound discretion of the trial judge.[87] The *Madrid* court held that the *Fierro* court substantially restricted the trial judge's discretion by insisting upon a minimum qualification requirement. This requirement was that only those licensed to "practice medicine" (i.e. physicians and surgeons licensed to prescribe drugs) possessed adequate medical knowledge to satisfy the statute.[88] Section 52-4-1 specified which health care providers could render treatment to workmans' compensation claimants.[89] These health care providers included optometrists, dentists, podiatrists, osteopaths, nurses, chiropractors and psychologists, so long as they were duly licensed.[90] There was, therefore, a discernable conflict between the *Fierro* interpretation of Section 52-1-28(B) and Section 52-4-1. The legislature clearly considered the Section 52-4-1 health care providers competent enough to render: "cure, correction, prevention or diagnosis of any physical or mental condition."[91] It was inconsistent for the legislature to have enough confidence in these health care providers to authorize them to treat injured compensation claimants, and yet to have intended that these same health care providers be prohibited from testifying as to the cause of an injury squarely within their areas of expertise.[92]

4. Psychiatrists were no more capable of making causal determinations than were psychologists.

The defendant employer in *Madrid* argued that due to the "highly speculative nature" of psychological injuries, psychiatric testimony was necessary in order to protect employers from the possibility of feigned symptoms.[93] The supreme court was unconvinced by this argument, as the employer referred to nothing indicating that a psychologist was less able to detect "feigned symptoms" than was a psychiatrist.[94] There was no authority for the proposition that psychologists were more likely to speculate than were psychiatrists.[95] To make a blanket disqualification of psychologists defeated the purpose of Evidence Rule 11-702. The purpose of this rule was to assist the trier of fact to understand the evidence and determine the issues of fact.[96] The defendant's argument that psychological

86. *Id.*
87. *Id.*, citing State ex. rel. State Highway Dep't. v. Fox Trailer Court, 83 N.M. 178, 489 P.2d 1176 (1971); Dahl v. Turner, 80 N.M. 564, 458 P.2d 816 (Ct. App.), *cert. denied*, 80 N.M. 608, 458 P.2d 860 (1969).
88. *Madrid*, 105 N.M. at 717, 737 P.2d at 76.
89. *Id.*
90. N.M. STAT. ANN. § 52-4-1 (1986 Cum. Supp.).
91. *Madrid*, 105 N.M. at 717, 737 P.2d at 76, citing N.M. STAT. ANN. § 52-4-1 (1986 Cum. Supp.)
92. *Madrid*, 105 N.M. at 717, 737 P.2d at 76.
93. *Id.*, 105 N.M. at 717-18, 737 P.2d at 76-77.
94. *Id.* at 718, 737 P.2d at 77.
95. *Id.*
96. *Id.*

injuries were speculative lent credence to the court's determination that various specialists were able to assist the factfinder in deciding whether the injuries were bona fide and, just as importantly, whether they were work-related.[97]

5. State courts are permitted to interpret state statutes.

The *Fierro* theory that this issue was a matter solely for the legislature assumed that the only interpretation of Section 51-1-28(B) was that a licensed medical doctor must testify.[98] Not only was it fundamental that interpretation of the law was a judicial matter, but where the question was one of construction of state statutes, the state courts could pass upon it as an issue of law.[99] Because the record in *Madrid* supports the trial judge's opinion that the clinical psychologist was clearly capable of presenting competent medical opinion evidence, the supreme court reversed both the court of appeals and the district court.[100] The supreme court also remanded the matter to the district court to determine whether Ms. Madrid established her claim with the testimony of the psychologist.[101]

6. The New Mexico Supreme Court's interpretation of the causation provision at issue was reasonable.

New Mexico's worker's compensation statutes are similar to those of Alaska and Idaho. Additionally, these statutes are patterned closely after the Arizona workers' compensation system. An examination of the workmans' compensation law in these jurisdictions reveals that the New Mexico Supreme Court's decision in *Madrid* was reasonable.[102]

In Alaska, causation must be established by expert testimony, not expert *medical* testimony.[103] Alaska merely requires that the causation fall within the witness' area of expertise.[104] In Idaho, a health care provider such as a clinical psychologist, who was entitled to diagnose, treat and correct mental conditions, was also competent to testify regarding the causes of such conditions.[105]

Arizona workmans' compensation law has evolved in much the same way as New Mexico's. In 1976, the Arizona Court of Appeals held that the question of whether there is a direct causal relationship between a claimant's physical injury and his emotional condition constitutes a medical diagnosis. Such a diagnosis could only be provided by expert medical testimony and not by the testimony of a licensed clinical psychologist.[106] Then, in 1980, the Arizona Supreme Court

97. *Id.* at 718, 737 P.2d at 77. *See, also,* Andrus v. Rimmer & Garrett, Inc., 316 So.2d 433 (La.App. 1978).

98. *Madrid,* 105 N.M. at 716, 737 P.2d at 75.

99. *Id.* at 718, 737 P.2d at 77 (citing Pan American Petroleum Corp. v. El Paso Natural Gas Co., 77 N.M. 481, 424 P.2d 397 (1966)).

100. 105 N.M. at 719, 737 P.2d at 78.

101. *Id.*

102. *See infra* notes 102 to 109 and accompanying text.

103. Employer's Commercial Union Ins. Cos. v. Schoen, Alaska, 554 P.2d 1146 (1976). New Mexico has incorporated this requirement into the 1987 Workers' Compensation Act at § 52-1-28(B).

104. *Employer's Commercial,* 554 P.2d at 1149.

105. O'Loughlin v. Circle A. Constr., 112 Idaho 1048, 1053, 739 P.2d 347, 352 (1987).

106. Bilbrey v. Industrial Comm'n., 27 Ariz. App. 473, 474, 556 P.2d 27, 28 (Ct. App. 1976); *but see* Hooper v. Industrial Comm'n of Arizona. 126 Ariz. 586, 617 P;.2d 538 (Ct. App. 1980).

held that a licensed clinical psychologist was competent to testify as to the causal relationship between an industrial injury and a mental condition, if the condition fell within the scope of his practice.[107] This was because by statute psychologists were entitled to diagnose, treat and correct mental conditions within their field. As a consequence, they were also competent to testify regarding causes of such conditions.[108] In 1983, the Arizona Supreme Court held that expert testimony on causation did not have to be given by a medical doctor, so long as the witness had the qualifications required by the evidence rule governing testimony by experts, as well as by the facts of the particular case.[109] Therefore, the New Mexico Supreme Court's decision allowing psychologists to testify as to causation was a reasonable one because it served to bring New Mexico into line with the standard of proof required in other jurisdictions with similar workmans' compensation statutes.

7. Procedural Aspects of *Madrid*

The *Madrid* decision involved some unusual procedural twists. In 1986, when the case was first heard, the supreme court consisted of Justices Stowers, Riordan, Federici, Walters, and Sosa.[110] Judge Traub was sitting in the case by designation for Justice Federici.[111] This court decided *Madrid* in a 3-2 split and issued an opinion, which was filed on November 24, 1986.[112] Justice Stowers wrote the majority opinion for Justices Riordan and Judge Traub.[113] Justice Walters wrote a dissent, with which Justice Sosa concurred.[114] In 1987, the court's personnel changed to include Justices Stowers, Walters, Sosa, Scarborough and Ransom. Following this change, the court granted a motion for rehearing in *Madrid* and subsequently reversed itself.[115] This decision reflected another 3-2 split, but this time Justice Walters was in the majority.[116] She wrote the opinion and Justices Sosa and Ransom concurred.[117] Justice Stowers and Judge Traub dissented without opinion.[118] The November 24, 1987 opinion was withdrawn and a substitute opinion was filed March 18, 1987.[119]

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107. *Hooper*, 126 Ariz. at 588, 617 P.2d at 540.

108. *Id.*

109. Madison Granite Co. v. Industrial Comm'n. of Arizona, 138 Ariz. 573, 577-78, 676 P.2d 1, 5-6 (Ct. App. 1983).

110. 26 N.M. BAR BULL. 113 (Feb. 5, 1987).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. 26 N.M. BAR BULL. 377 (Apr. 23, 1987).

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* There were also interesting procedural developments in another New Mexico Supreme Court case, Boudar v. E. G. & G., Inc., 105 N.M. 151, 730 P.2d 454 (1986). Boudar brought a wrongful discharge action against her employer. The trial court found for Boudar and the Supreme Court reversed.Justice Federici wrote the opinion for Justices Stowers, Riordan and Walters. Justice Sosa did not participate. This opinion was filed December 12, 1986. Following the 1987 change of personnel on the bench, the New Mexico Supreme Court granted a Motion for Reconsideration of the denial of a Motion for Rehearing and reversed itself. Boudar v. E. G. & G., Inc., 106 N.M. 279, 742 P.2d 491 (1987). Justice Sosa wrote the opinion and Justices Scarborough, Walters and

B. Implications of the Madrid *Decision*

The *Madrid* decision was indicative of the many problems that existed in the New Mexico Workmans' Compensation statute. As a result, the New Mexico legislature scrutinized and drastically revamped the Act. Even before the *Madrid* decision was published, the legislature was concerned with other aspects of the state's workmans' compensation law. In 1986, an Interim Act was passed.[120] The Act became the "Workers' Compensation Act" rather than the "Workmens' Compensation Act."[121] Following the Interim Act, other changes were incorporated, which resulted inthe Workers' Compensation Act as it now exists. On June 29, 1987, the revised version of § 52-1-28(B) became effective.[122]

1. General Effect of the New Workers' Compensation Act

The new Workers' Compensation Act divests the district court of jurisdiction to hear workers' compensation claims and places that jurisdiction in the Workers' Compensation Division, an administrative body. The New Mexico Supreme Court held that creation of a workers' compensation administration and vesting it with the authority to decide controversies thereunder was a valid exercise of legislative power.[123]

Under the 1987 Act, the Director (or his designee) initially holds an informal conference and makes recommendations (suggested findings) as to the case's disposition. Such findings merely have the effect of recommendations, and if either party to the action objects in a timely manner, the claim then goes to a Hearing Officer for a Formal hearing.

The Hearing Officer (an attorney) makes findings of fact and conclusions of law following a formal hearing.[124] He is not authorized to tax any costs, with the exception of witness fees. (Otherwise no health care provider would ever be willing to be a witness for workers' compensation actions.) Under Section 52-5-7(B), an award of attorney's fees is available to the prevailing party. At this point in the administrative process, the Hearing Officer has the power to make a binding decision as to the validity of the claim.

The legislature adopted the same judicial review standards to a decision by a Hearing Officer as the appellate courts previously had regarding trial court decisions. Further, the reviewing court is not bound by the Hearing Officer's conclusions and can independently draw its own conclusions from the facts.[125]

The New Mexico Supreme Court, in *Wylie*, stated that it was within the legislative competency in the absence of any constitutional restriction to vest an administrative board with the power to determine questions of fact and proceedings under acts such as the Workers' Compensation Act.[126]

Ransom concurred. Justice Stowers dissented. The December 12, 1986 opinion was withdrawn and a substitute filed March 18, 1987.

120. N.M. STAT. ANN. §§ 52-1-1, et.seq. (1987 Repl. Pamp.).

121. *Id.*

122. N.M. STAT. ANN. § 52-1-28(B) (1987 Repl. Pamp.).

123. Wylie Corporation v. Mowrer, 104 N.M. 751, 753, 726 P.2d 1381, 1983 (1986), overruling State ex. rel. Hovey Concrete Products Co. v. Mechem, 63 N.M. 250, 316 P.2d 1069 (1957).

124. N.M. STAT. ANN. §§ 52-1-1, et. seq. (1986 Repl. Pamp.).

125. N.M. STAT. ANN. § 52-1-28(B) (1987 Repl. Pamp.).

126. *Wylie*, 104 N.M. 753, 726 P.2d 1383.

For several years before *Wylie*, workers' compensation cases had proven to be the most prolific course of litigation reaching the New Mexico courts. The new Workers' Compensation Act was an effort on the part of the legislature to create a commission to handle the myriad claims arising under workers' compensation law and relieve the courts of the increasing load imposed upon them in hearing and deciding these cases in the first instance.

2. The 1987 Workers' Compensation Act allowed all qualified health care providers to testify as to causation

In order to deal with the problems raised in *Madrid*, the legislature changed the phrase regarding proof of causation from "as a medical probability by expert medical testimony" to "as a probability by expert testimony of a health care provider, as defined in Section 52-4-1 NMSA 1978."[127] Section 52-4-1 was enacted in 1983 and its language has remained the same. "Health care providers" under Section 52-4-1 includes hospitals, nurses, optometrists, chiropractors, dentists, physicians, podiatrists, osteopaths, psychologists, and nurse-midwives.[128] The health care providers are required to be licensed pursuant to the relevant New Mexico provisions.[129] A major difference came about, however, under the 1987 Act. Section 52-4-1, when read in concert with Section 52-1-28(B), allowed all health care providers qualified to render care to compensation claimants to testify as to caustaion. This eliminated the inconsistencies that previously existed between the two sections. As a result, there now exists no further ambiguity in connection with who is qualified to testify as to causation.

3. The 1987 Workers' Compensation Act requires a health care provider's causation testimony to be within his area of expertise.

As to causation, the health care provider now has to testify "within the area of his expertise."[130] This phrase was promulgated as a reaction to the line of New Mexico cases which stated that the causation witness did not have to be a specialist in the injuries claimed by the plaintiff.[131] The provision prevents general practitioners from testifying in areas which require high levels of expertise. This provision is beneficial to all parties involved in the claims process. The worker's expert can offer detailed causation testimony directly related to the specific injury in question. The employer can more effectively defend against a showing of causation. The Workers' Compensation Administration can now hear more specialized, individualized expert testimony, allowing it to make a more educated determination.

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127. N.M. STAT. ANN. § 52-1-28(B) (1987 Repl. Pamp.)
128. N.M. STAT. ANN. § 52-4-1 (1986 Comp.)
129. *Id.*
130. N.M. STAT. ANN. § 52-1-28(B) (1987 Repl. Pamp.) reads:
> In all cases where the employer or his insurance carrier deny that an alleged disability is a natural and direct result of the accident, the worker must establish that causal connection as a probabiity by expert testimony of a health care provider as defined in Section 52-4-1, N.M.S.A. 1978, testifying within his area of expertise.
131. *See supra* notes 55-58.

4. Changes Specifically Concerning Psychologists in the 1987 Act.

The Workers' Compensation Act includes two changes specifically concerning psychologists and/or psychological injuries claimed by workers under the Act. The 1986 Act specifically excluded by definition disability benefits based "solely on a psychological injury" as to permanent total disability and permanent partial disability. This is set forth in Section 52-1-24 and 52-1-25 (1986 Supp.). The definition of "temporary total disability" under the Interim Act makes no reference to excluding disabilities based solely on a psychological injury." The Interim Act also did not make any provisions for temporary partial disability.

The 1987 Act made significant changes in the field of psychological disabilities, in that it specifically allowed for psychological disabilities to be compensable and made a distinction between "primary" and "secondary" mental impairments. "Primary mental impairment" is defined in Section 52-1-24(B).[132] "Secondary mental impairment" is defined in Section 52-1-24(C) as a "physical to mental" type of injury.[133]

VI. CONCLUSION

The New Mexico Supreme Court held in *Madrid* that a clinical psychologist was qualified to give an opinion concerning the causal connection between an employee's disability and her employment under the New Mexico Workers' Compensation statute which required that causation be proven by "expert medical testimony."[134] The *Madrid* decision was evidence of the fact that substantial problems existed in New Mexico workmens' compensation law. The New Mexico legislature responded by totally revamping this jurisdiction's workers compensation law.

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132. N.M. STAT. ANN. § 52-1-24(B) (1987 Repl. Pamp.)

133. Another change which has gone somewhat unnoticed is the change in § 52-5-1. This section indicates:

> It is the specific intent of the legislature that benefit claims cases be decided on their merits, and the common law rule of "liberal construction" based on the supposed "remedial" basis of worker's benefits legislation shall not apply in these cases. The worker's benefits system in New Mexico is based on a mutual renunciation of common law rights and defenses by employers and employees alike. Accordingly, the legislature thereby declares that the Workers Compensation Act and the New Mexico Occupational Disease Disablement Act are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

134. *Madrid*, 105 N.M. 715, 737 P.2d at 74.