FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
9/12/2022 1:41 PM
KATHLEEN VIGIL CLERK OF THE COURT
Edith Suarez-Munoz

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

EILENE McLARTY AND ERNESTINE JARAMILLO,
on behalf of themselves and ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

v. Case. No. D-101-CV-2020-01566

PRESBYTERIAN HEALTHCARE SERVICES, INC.

Defendant.

ORDER GRANTING MOTION TO CERTIFY CLASS

This matter is before the Court on Plaintiffs' Motion for Class Certification filed February 28, 2022. The Defendant, Presbyterian Healthcare Services, Inc. (PHS) filed a Response on April 8, 2022 and Plaintiffs' Reply Brief In Support of Its Motion for Class Certification was filed May 10, 2022. A hearing was held on the Motion on July 18, 2022. The Court, having reviewed the Motion and the pleadings in this matter and being otherwise fully informed in the premises, finds that the Motion is well-taken and, therefore, GRANTS the motion and certifies the class, as requested. THE COURT FINDS, CONCLUDES AND ORDERS:

Plaintiffs request that this Court: (1) certify this case as a class action under Rules 1-023(A) and 1-023(B)(3), with a right for class members to opt-out under Rule 1-023(C)(2); and (2) appoint Plaintiff's counsel as class counsel. Plaintiffs are seeking to certify a class of:

> All parents or guardians who were billed for medical services related to their minor child's treatment by Dr. Guy Rosenschein during his tenure at PHS as an employed doctor or locum tenens.

To obtain certification of a class action, a plaintiff must establish that the four prerequisites of Rule 1–023(A), commonly referred to as numerosity, commonality, typicality, and adequacy,

are satisfied. See *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, (1997); *Armijo v. Wal-Mart Stores, Inc.*, 2007–NMCA–120, ¶¶ 25–26, 142 N.M. 557. Then, the plaintiff must show that the class is maintainable under one of several criteria set forth in Rule 1–023(B). See *Amchem Prods.*, 521 U.S. at 614; *Armijo*, 2007–NMCA–120, ¶¶ 25–26. Failure to establish any one requirement is a sufficient basis for the district court to deny certification.

In examining the request for certification, the court must bear in mind that plaintiffs are not required to prove their case at the certification stage. Thus, certification is not an appropriate time to examine the merits. *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 178, 94 S.Ct. 2140, 40 L.Ed.2d 732 (1974) (holding certification is not an occasion for inquiry into the merits). *Brooks v. Norwest Corp.*, 2004-NMCA-134, ¶ 9, 136 N.M. 599, 604, 103 P.3d 39, 44.

Numerosity

1. The proposed class readily meets the Rule 1-023(A)(1) requirement that the class be so numerous that "joinder of all members is impracticable." Rule 1-023(A)(l).

2. "To satisfy this requirement, plaintiffs must produce some evidence or otherwise establish by reasonable estimate the number of class members who may be involved." *In re Motor Fuel Temperature Sales Pracs. Litig.*, 258 F.R.D. 671, 678-79 (D. Kan. 2009).

3. Plaintiffs have presented evidence that the class is approximately 3,100 individuals because Rosenschein saw 3,132 juvenile patients while working at PHS from November 2012 to November 2016. PHS has not disputed that the class is sufficiently numerous.

4. Plaintiffs have accordingly satisfied the numerosity prerequisite.

Commonality

5. "The commonality requirement of Rule 1–023(A)(2) is relatively easily met because it is deemed to require only that a single issue be common to the class." *Berry v. Fed. Kemper Life Assurance Co.*, 2004–NMCA–116, ¶ 42, 136 N.M. 454.

6. Where the issue presented "involves standardized conduct of the defendants toward members of the proposed class, a common nucleus of operative fact is typically presented, and the commonality requirement" is satisfied. *Yazzie v. Ray Vickers' Special Cars, Inc.*, 180 F.R.D. 411, 416 (D.N.M. 1998) (internal quotation marks omitted).

7. "[T]o determine whether Plaintiffs' claim here depends upon a common contention, we look at the elements of the claim." *Brooks v. Norwest Corp.*, 2004-NMCA-134, ¶ 31, 136 N.M. 599; *Sloane v. Rehoboth Mckinley Christian Health Care Services, Inc.*, 2018-NMCA-048, ¶ 25, 423 P.3d 18.

8. To establish a claim under New Mexico's Unfair Practices Act, N.M. Stat. § 57-12-3 ("UPA"), a plaintiff must show, among other things, that the defendant made (a) "a representation of any kind that was either false or misleading;" (b) "the false or misleading representation was knowingly made in connection with the sale . . . of goods or services in the regular course of the defendant's business;" and (c) "the representation was of the type that may, tends to, or does deceive or mislead any person." *Trujillo v. State Farm Mut. Auto. Ins. Co.*, No. CV 18-638 KK/JHR, 2019 WL 6701326, at *11 (D.N.M. Dec. 9, 2019).

9. Under the UPA, a plaintiff need not prove detrimental reliance upon the defendant's representations. *See Lohman v. Daimler-Chrysler Corp.*, 2007-NMCA-100, ¶ 35, 142 N.M. 437.

10. The elements of a claim for negligent misrepresentation include that: (a) the defendant made a statement that, though perhaps literally true, is misleading; (b) the defendant failed to exercise ordinary care in obtaining or communicating the statement; (c) the defendant

intended that the plaintiff receive and be influenced by the statement; and (d) it was reasonably foreseeable that the plaintiff would be harmed if the information was incorrect or misleading. *Eckhardt v. Charter Hosp. of Albuquerque, Inc.*, 1998-NMCA-017, ¶ 20, 124 N.M. 549, 953 P.2d 722.

11. An intentional or fraudulent misrepresentation claim has the following elements: (a) the defendant "made a misrepresentation of fact intentionally or with reckless disregard for the truth," (b) the statement was made "with the intent to deceive and to induce the injured party to act upon it," and (c) "the injured party actually and detrimentally relied" on the misrepresentation. *Saylor v. Valles*, 2003-NMCA-037, ¶ 21, 133 N.M. 432.

12. In a class action case alleging intentional or negligent misrepresentation, the class's reliance does not need to be shown by direct evidence; it can be inferred based on the circumstances. *See Vasquez v. Superior Ct.*, 4 Cal. 3d 800, 814, 484 P.2d 964 (1971) (citing cases); *Sollenbarger v. Mountain States Tel. & Tel. Co.*, 121 F.R.D. 417, 434 (D.N.M. 1988)).

13. Plaintiffs' claims turn on a single set of facts related to how PHS held Rosenschein out as a qualified pediatric surgeon and pediatric urologist, Rosenschein's qualifications, and how PHS facilitated access to Rosenschein.

14. For the UPA claims, the primary questions common to the entire class include: (a) whether PHS mispresented Rosenschein's credentials, qualifications, and/or skills; (b) whether such misrepresentations were made in connection with the sale of services; and (c) whether the misrepresentations were of a type that would mislead a reasonable person.

15. As to the misrepresentation claims, the common questions are the same, with the additional considerations of (a) PHS's knowledge and intent in holding Rosenschein out as a

qualified pediatric urologic surgeon and (b) whether reliance can be presumed in these circumstances.

16. The answers to those questions do not vary based on the individual experiences of specific class members, but instead can be answered for all class members at once based on PHS's actions.

17. Here, even if class members were exposed to various alleged misrepresentations by PHS, PHS's holding Rosenschein out as a qualified pediatric surgeon and urologist and allowing him to practice with the Hospital's imprimatur could be found as a misrepresentation common to all class members. *See Houghland v. Grant*, 1995-NMCA-005, ¶19, 119 N.M. 422, 891 P.2d 563 (finding patients justifiably relied on appearance that people working in emergency room provide medical care on behalf of hospital).

18. Under a reasonable person standard, regardless of whether and which statements any individual saw on PHS's website or literature, or what made them select Rosenschein as their treating physician, it could be found that all Plaintiffs understood him to be qualified to provide the care sought based on his employment by PHS.

19. That class members might have had different medical reasons for seeking treatment from Rosenschein also does not impact commonality. A patient's diagnosis or medical needs does not pertain to or implicate the common evidence and questions at issue, namely, Rosenschein's credentials, whether he was qualified to practice as a pediatric surgeon and pediatric urologist at PHS, and PHS's actions presenting him as a qualified physician

20. Accordingly, Plaintiffs have met the Rule 1-023(A)(2) commonality requirement.

Typicality

21. In determining whether "the claims or defenses of the representative parties are typical of the claims or defenses of the class," Rule 1–023(A)(3), courts assess "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same conduct." *Armijo,* 2007–NMCA–120, ¶28 (internal quotation marks and citation omitted).

22. This inquiry is meant to "gauge in general how well the proposed class representative's case matches the class factual allegations and legal theories . . . but [t]he fit need not be perfect." *Berry*, 2004–NMCA–116, ¶ 43.

23. Unless that fit varies so greatly as to create a conflict between the named parties and the class, "varying fact patterns in individual claims will not usually defeat typicality." *Id.*

24. Differences in damages and related affirmative defenses usually do "not impact the typicality of the class claims, and the representative party's claim does not have to be identical to the claims possessed by every class member." *Tierra Realty Trust LLC v. Village of Ruidoso*, 2013-NMCA-030, ¶ 14, 296 P.3d 500; *see also Starko, Inc. v. Presbyterian Health Plan, Inc.*, 2012-NMCA-053, ¶ 106, 276 P.3d 252, rev'd on other grounds sub nom. *Starko, Inc. v. New Mexico Hum. Servs. Dep't*, 2014-NMSC-033, ¶ 106, 333 P.3d 947 (affirming the district court's finding of typicality as a textbook example despite differences as to damages); *Armijo,* 2007–NMCA 120, ¶ 30 (affirming the district court's finding of typicality despite unique work environments of plaintiffs and factual differences between individual claims).

25. That Plaintiff Jaramillo, as well as other class members, may have obtained insurance coverage or government benefits for some or all of the costs of Rosenschein's treatment does not undermine typicality because all patients were still billed by PHS for Rosenschein's services.

26. The extent to which insurance or government benefits paid claims is an argument related to who would ultimately receive potential awards of damages, which is not a bar to finding typicality or adequacy met. *See, e.g., Tierra Realty Tr. LLC*, 2013-NMCA-030, ¶¶ 13-14 (examining whether "other class members have been injured by the same conduct" and finding that, while plaintiffs and other class members may have paid different amounts to defendant and may have a different "entitlement to damages," that "does not impact the typicality of the class claims;"); *Bhasker v. Kemper Cas. Ins. Co.*, 361 F. Supp. 3d 1045, 1099 (D.N.M. 2019) ("[J]ust because each plaintiff and class member may get a different amount . . . does not defeat class certification.").

27. Regardless of insurance or government benefit payments, Ms. Jaramillo is typical because she, like other class members, was billed for Rosenschein's services.

28. Typicality is, like commonality, is unaffected by the fact that class members did not necessarily see the same statements regarding Rosenschein by PHS.

29. The Named Plaintiffs are typical of other class members insofar as they, like any reasonable person, could presumably and reasonably understand Rosenschein to be a qualified pediatric surgeon and pediatric urologist by virtue of how he was held out by PHS.

Adequacy

30. Rule 1–023(A)(4) requires that representative parties "fairly and adequately protect the interests of the class." *Berry*, 2004-NMCA-116, ¶ 45.

31. This inquiry involves evaluating the conflicts of interest of class representatives, as well as the conflicts and competency of class counsel. *Rivera-Platte v. First Colony Life Ins. Co.*, 2007-NMCA-158, ¶ 36, 143 N.M. 158 (citing *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625-

26 & n.20 (1997); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

32. The adequacy provision is satisfied where the representatives' claims are sufficiently interrelated, and not antagonistic, to the claims of the class, *Hanlon*, 150 F.3d at 1020, and class counsel is qualified and will diligently prosecute this case, *Berry*, 2004-NMCA-116, ¶ 41.

33. PHS challenges adequacy based on whether Plaintiffs saw and relied on certain website statements.

34. Plaintiffs McLarty and Jaramillo were subject to the same misleading representation PHS made to the entire class: that Rosenschein was qualified to work as a pediatric surgeon and pediatric urologist. Due to that representation, like the entire class, they let their minor children receive treatment from Rosenschein at PHS, and ultimately received a bill from PHS for his services. S*ee Armijo*, 2007-NMCA-120, ¶ 28 (finding named plaintiffs claims met typicality were "other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same conduct.").

35. There is no conflict between Plaintiffs' legal claims and those of the class, and the Plaintiffs' claims rise and fall with those of the class. *See In re EpiPen*, 2020 WL 1873989 at *19 (D. Kansas Feb. 27, 2020) ("Only a 'fundamental conflict' about the specific issues in controversy will prevent a named plaintiff from representing the interests of the class adequately . . . A fundamental conflict exists where some class members claim an injury resulting from conduct that benefited other class members.") (citations omitted).

36. The interests of the class and the interests of the Plaintiffs are the same in relation to the claims and issues being litigated.

37. The identical nature of the claims precludes any possible antagonism between the Plaintiffs' claims and those of the class they seek to represent.

38. The Plaintiffs have each affirmed, and indeed demonstrated throughout the case to this stage, their willingness to undertake the responsibilities of serving as class representatives.

39. Accordingly, Plaintiffs will fairly and adequately represent the needs of the Class.

40. PHS does not challenge the adequacy of class counsel.

41. Plaintiffs have thus met the adequacy requirement.

42. The Plaintiffs have established the four prerequisites of Rule 1–023(A), therefore the Court moved on to examine if the class is maintainable under one of several criteria set forth in Rule 1–023(B). Here, the Plaintiffs argue that they meet Rule 1–023(B)(3).

Rule 1-023(B)(3) Predominance and Superiority

43. Rule 1–023(B)(3) requires that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

44. Rule 1–023(B)(3) lists the following matters as pertinent to those two findings:

a. the interest of members of the class in individually controlling the prosecution or defense of separate actions;
b. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
d. the difficulties likely to be encountered in [its] management.

45. Courts look to "predominance" to determine whether the action is efficient, manageable, *id.*, and "sufficiently cohesive to warrant adjudication by representation,'" *Berry*, 2004-NMCA-116, ¶ 47 (citing *Amchem Prods., Inc.*, 521 U.S. at 623).

46. Generally, predominance can be found "when the 'issues in the class action that are subject to generalized proof, and thus applicable to the class as a whole, . . . predominate over those issues that are subject only to individualized proof.'" *Id.*

47. "A class action is 'superior' to other available methods when there is a need to remedy a common legal grievance and where a class action serves to achieve economies of time, effort and expense." *Yazzie*, 180 F.R.D. at 417.

48. Here, because Plaintiffs' claims turn on PHS's conduct, there are no individualized issues and the common issues are predominant.

49. The element of reliance is not an individualized issue in this case.

50. As an initial matter, reliance is not an element of a UPA claim; the inquiry is instead whether the misrepresentation would have deceived a reasonable person. *Smoot v. Physicians Life Ins. Co.*, 2004-NMCA-027, ¶¶ 17-23, 135 N.M. 265 ("Plaintiff need not allege or prove that she relied on Defendant's purported deceptive conduct in order to recover under either act"); *Lohman v. Daimler-Chrysler Corp.*, 2007-NMCA-100, ¶ 35, 142 N.M. 437; *Bhasker*, 361 F. Supp. 3d at 1137; *Bhasker v. Fin. Indem. Co.*, No. 117CV00260KWRJHR, 2022 WL 860368, at *7 (D.N.M. Mar. 23, 2022) (finding in UPA case that "[t]he jury will not have to determine whether each plaintiff subjectively relied on the omissions, but will instead have to determine only whether those omissions were likely to deceive a reasonable person. This does not involve an individualized inquiry.") (citations omitted).

51. Plaintiffs' claims are based on the fact that the class members' minor children saw Rosenschein because PHS held him out as a pediatric surgeon and pediatric urologist. The class members were subsequently billed by PHS for those services, which establishes the necessary causal link. *See id.* ("Causation requires a nexus between a defendant's conduct and a plaintiff's loss . . .").

52. Reliance is an element of Plaintiffs' common law claims for negligent and intentional/fraudulent misrepresentation, *see Bull v. BGK Holdings, LLC*, 859 F. Supp. 2d 1238, 1247 (D.N.M. 2012), but that does not impede class certification here.

53. "[I]ssues of reliance can be disposed of on a classwide basis without individualized attention at trial." *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1089 (10th Cir. 2014).

54. This is true where "circumstantial evidence of reliance can be found through generalized, classwide proof." *Id.*

55. Sometimes framed as "presumed reliance," courts can look at the circumstances of the misrepresentation and whether it would be "logical to believe that a reasonable person . . . would attach importance to the omitted fact in his choice of action on the transaction in question." *Berry*, 2004-NMCA-116, ¶ 75 (citing *Spark v. MBNA Corp.*, 178 F.R.D. 431, 435-36 (D. Del. 1998)).

56. As explained above, the misrepresentation at issue is PHS's holding Rosenschein out as a qualified pediatric surgeon and urologist.

57. If proven, this constitutes both an affirmative misrepresentation *and* a misrepresentation by omission because PHS did not disclose the material fact that Rosenschein did not meet the hospital's own requirements for a doctor to practice in the pediatric surgery and

urology subspecialities, even though the lack of qualifications was known to PHS. *Lohman v. Daimler-Chrysler Corp.*, 2007-NMCA-100, ¶ 40, 142 N.M. 437 ("The UPA . . . imposes a duty to disclose material facts reasonably necessary to prevent any statements from being misleading."); *Azar v. Prudential Ins. Co. of Am.*, 2003-NMCA-062, ¶ 65, 133 N.M. 669, (finding UPA "prohibit[s] the making of any untrue, misleading, or deceptive statements . . . this includes . . . failing to state a material fact if doing so deceives or tends to deceive."); *Garcia v. Presbyterian Hosp. Ctr.*, 1979-NMCA-034, ¶ 13, 92 N.M. 652, *overruled by statute on other grounds* (finding hospital had fiduciary duty to disclose); *id.* ("In the common knowledge of man, patients submit themselves to the skills and arts, proficiency and expertise, of hospital personnel, once they become confined to a hospital . . . Coexistent with that relationship, therefore, is the hospital's obligation to divulge all material facts to its patients."); *Keithley v. St. Joseph's Hosp.*, 1984-NMCA-104, ¶ 15, 102 N.M. 565, 698 P.2d 435, *writ quashed sub nom. Murrell v. Keithley*, 1985-NMSC-042, ¶ 15, 102 N.M. 565, 698 P.2d 435 ("New Mexico follows the rule that where a fiduciary duty or confidential relationship exists, as between a physician and a patient, a duty arises to disclose all material information concerning the patient's treatment.").

58. Plaintiffs' claims are based on the fact that a reasonable person, like the class members, could presume that, based on his employment at PHS as a pediatric surgeon and pediatric urologist, Rosenschein was a qualified medical professional in those areas.

59. Plaintiffs contend that PHS's reputation in the community and its decisions to supply Rosenschein with a badge, office, credentials and patients created reasonable expectations regarding his qualifications. *See Houghland v. Grant*, 1995-NMCA-005, ¶ 19, 119 N.M. 422, (finding patients justifiably relied on appearance that people working in emergency room provide medical care on behalf of hospital); *see also Jaramillo v. Gonzales*, 2002-NMCA-072, ¶ 28, 132

N.M. 459 ("The UPA does not require a statement, but rather any representation."); see *Eckhardt*, 1998-NMCA-017, ¶ 49 (finding evidence that hospital gave unqualified therapist business cards, advertised his services, and provided him an office and clerical support in a hospital facility created expectation that the therapist had the credentials and supervision required under hospital's bylaws sufficient to support jury verdict of negligent misrepresentation).

60. Plaintiffs do not need to show exposure to or reliance on the individual statements on PHS's website or in its advertising, as their claims are based on PHS's fundamental misrepresentation of Rosenschein as qualified to practice pediatric surgery and urology at PHS.

61. PHS's advertisement that its pediatric surgeons were board-certified, at the time when Rosenschein was one of the few (and at the time only full-time) pediatric surgeons employed by PHS could be misleading to a reasonable person as it can be generally assumed that, when operating in the United States, references to certifications are the applicable and relevant ones in this country.

62. Plaintiffs' damages theory of the case is that Rosenschein's services were not what Plaintiffs bargained for: Plaintiffs sought treatment from a qualified pediatric surgeon or pediatric urologist, and they did not receive it.

63. As a general matter, "[a] person is not permitted to profit by his own wrong." *Daye v. Cmty. Fin. Loan Serv. Centers, LLC*, 280 F. Supp. 3d 1222, 1257 (D.N.M. 2017) (citing Restatement (Third) of Restitution and Unjust Enrichment § 3).

64. Restitution is a way to disgorge improperly gained profits and is a remedy "normally available to consumer plaintiffs in unfair and deceptive trade practices cases, just as this form of relief is available for the tort of misrepresentation and sometimes for breach of contract." Rescission and Restitution, Consumer Protection and the Law § 6:8; see N.M. Stat. Ann. § 57-12-

10 ("The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state."); *State ex rel. King v. B & B Inv. Grp., Inc.*, 2014-NMSC-024, ¶ 48, 329 P.3d 658 ("It would not further the purpose of the UPA . . . to allow Defendants to retain the full profits of their unconscionable trade practices.")

65. Plaintiffs argue that no reasonable parent would have had their child treated by Rosenschein if PHS had not held him out to be a qualified pediatric surgeon and pediatric urologist. As such, PHS could not have billed or received *any* compensation from Rosenschein's medical care, or services incident to it, had they not made that knowing misrepresentation. *See Daye*, 280 F. Supp. 3d at 1257 (restitution appropriate where defendant benefited from its unfair conduct because it would not have been able to collect as much money without its legal violations).

66. Contrary to PHS's argument that individual determinations are necessary to determine the "value" of Rosenschein's care, under Plaintiffs' theory, damages can be calculated in the same way for everyone: by a simple mathematical calculation of each class member's billing records for direct and attendant charges for Rosenschein's services.

67. PHS argues that there are individual issues because each member of the class would need to individually show an actual loss under UPA, and not everyone would be a "buyer" depending on how their bill from PHS was paid.

68. The extent to which insurance or government benefits paid a claim is not relevant to PHS's liability, and rather is an argument related to who would ultimately receive potential awards of damages.

69. In situations where insurance payment is involved, parties can still bring claims even if their insurance company has paid money for that claim on their behalf and can vindicate

the interest of the insurance provider as part of the lawsuit. *See Health Plus of New Mexico, Inc. v. Harrell*, 1998-NMCA-064, ¶ 6, 125 N.M. 189, 191, 958 P.2d 1239.

70. Any potential differences in damages this issue would raise pales in comparison to the number and importance of the questions common to the class. *See In re EpiPen*, 2020 WL 1873989, at *23 ("[T]he Tenth Circuit has rejected the argument that individual damages issues preclude certification . . . material differences in damages determinations will destroy predominance only if those individualized issues will overwhelm . . . questions common to the class.") (quoting *Naylor Farms, Inc. v. Chaparral Energy, LLC*, 923 F.3d 779, 798 (10th Cir. 2019)) (internal quotation marks omitted).

71. Furthermore, the UPA issue PHS raises is simply not applicable here, as Plaintiffs have shown that each class member would have been billed by PHS according to their name and would have received services for their minor child in exchange.

72. This is in contrast to *New Mexico ex rel. Balderas v. Tiny Lab Prods.*, where the product itself was free and there was no engagement in the sale of services. 457 F. Supp. 3d 1103, 1122 (D.N.M. 2020), *on reconsideration*, 516 F. Supp. 3d 1293 (D.N.M. 2021) (finding UPA requirement that the unfair practice be connected to the sale of goods or services not met where the product at issue was free). Here, services at PHS are not free.

73. PHS's liability for statutory and punitive damages would also not require any individualized assessment, but rather would be based on PHS's behavior common to the class.

74. As to superiority, the individual claims in this case would be impractical to bring as individualized actions due to the length of time thousands of these cases would take to be resolved individually through the judicial process.

75. This forum is desirable because the incidents giving rise to the claims occurred in New Mexico, and most members of the putative class live in the nearby area.

76. Finally, there are no conflicts with other cases, as no other cases based on this theory of liability have been brought.

77. The Court finds the Plaintiffs have established that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." The requirements of Rule 1–023(B)(3), that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy" are established.

IT IS THEREFORE ORDERED that the Plaintiffs' Motion for Class Certification is GRANTED. The following class is certified as Plaintiffs in this case:

> All parents or guardians who were billed for medical services related to their minor child's treatment by Dr. Guy Rosenschein during his tenure at PHS as an employed doctor or locum tenens.

IT IS HEREBY ORDERED

Kathleen McGarry Ellenwood 9-12-22
KATHLEEN MCGARRY ELLENWOOD
District Court Judge, Division X

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing order was served on the attorneys listed below on the date of filing via e-file and serve.

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