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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **BEECHER CARLSON INSURANCE**  
3 **SERVICES, LLC and CALIFORNIA**  
4 **MEDICAL GROUP INSURANCE**  
5 **COMPANY RISK RETENTION GROUP,**

Court of Appeals of New Mexico  
Filed 3/2/2023 10:26 AM



Mark Reynolds

6 Plaintiffs-Appellants,

7 v.

**No. A-1-CA-38334**

8 **RUSSELL TOAL, as Superintendent**  
9 **of Insurance for the State of New Mexico,**

10 Defendant-Appellee.

11 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

12 **Francis J. Mathew, District Court Judge**

13 Madison, Mroz, Steinman, Kenny & Olexy, P.A.  
14 William C. Madison  
15 Gregory D. Steinman  
16 Albuquerque, NM

17 for Appellants

18 Office of Superintendent of Insurance  
19 R. Alfred Walker, Associate General Counsel  
20 Santa Fe, NM

21 for Appellee

22 **MEMORANDUM OPINION**

23 **HENDERSON, Judge.**

24 {1} Plaintiffs Beecher Carlson Insurance Services, LLC (Beecher) and California  
25 Medical Group Insurance Company Risk Retention Group (CRRG) (collectively,

1 Plaintiffs) appeal the district court’s dismissal of their declaratory judgment claim  
2 against New Mexico Superintendent of Insurance, Russell Toal (Defendant).<sup>1</sup>  
3 Plaintiffs filed a complaint for declaratory judgment asking the district court to  
4 construe Section 41-5-25 of the Medical Malpractice Act (the Act), NMSA 1978,  
5 §§ 41-5-1 to -29 (1976, as amended through 2021), to require that the Office of the  
6 Superintendent of Insurance (OSI) accept a late-tendered surcharge and recognize  
7 CRRG’s insured, DaVita Medical Group New Mexico, LLC (DaVita), as a qualified  
8 health care provider from June 1, 2017 through December 23, 2017.

9 {2} The request for declaratory judgment was combined with an appeal from a  
10 decision by OSI, following a hearing, refusing to accept the surcharge and refusing  
11 to retroactively recognize DaVita as a qualified health care provider during the  
12 relevant 2017 period. The district court first dismissed the declaratory judgment  
13 claim with prejudice, and then upheld OSI’s decision on appeal. Plaintiffs now  
14 appeal solely from the district court’s dismissal of their declaratory judgment claim,  
15 arguing that they are entitled to a de novo interpretation of the Act. Finding no error,  
16 we affirm the district court’s dismissal of Plaintiffs’ declaratory judgment claim.

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<sup>1</sup>John Franchini was the named defendant below. However, Mr. Franchini’s tenure as Superintendent and custodian of the Patient Compensation Fund (PCF) ended on December 31, 2019, after this appeal was filed. Russell Toal is now the current Superintendent and custodian of the PCF. *See* NMSA 1978, § 41-5-25(A) (1997, amended 2021). Pursuant to Rule 12-301(C)(1) NMRA, Mr. Toal is automatically substituted as Defendant and the proceedings in this matter shall be pursued in his name for the duration of his tenure as Superintendent.

1 {3} Because the parties stipulated to the facts below, and this non-precedential  
2 memorandum opinion is issued solely for the benefit of the parties, we presume they  
3 are familiar with the facts and procedural history of this case, and we do not provide  
4 a general background.

## 5 **DISCUSSION**

6 {4} We note at the outset that the issue before us is limited. Plaintiffs appeal only  
7 from the district court’s dismissal of their declaratory judgment claim. When  
8 Plaintiffs filed that claim, however, they also appealed to the district court OSI’s  
9 final order from an administrative hearing, which encompassed the same issues. The  
10 district court affirmed OSI’s determination. Plaintiffs have not filed a petition for  
11 certiorari seeking review of the district court’s decision on their administrative  
12 appeal. They have instead filed only a direct non-discretionary appeal from the  
13 dismissal of their declaratory judgment claim. *See Victor v. N.M. Dep’t of Health*,  
14 2014-NMCA-012, ¶ 18, 316 P.3d 213 (requiring litigants seeking review of a district  
15 court’s decision when it has exercised both its appellate and original jurisdiction to  
16 “pursue an appeal by filing a Rule 12-505 [NMRA] petition to address issues  
17 stemming from the exercise of the district court’s appellate jurisdiction, and a direct  
18 appeal to address issues stemming from the exercise of the district court’s original  
19 jurisdiction” (internal quotation marks and citation omitted)). Therefore, we limit

1 our review only to the district court’s dismissal of Plaintiffs’ declaratory judgment  
2 claim.

### 3 **Declaratory Judgment**

4 {5} It was not error for the district court to dismiss Plaintiffs’ declaratory  
5 judgment claim.<sup>2</sup> Plaintiffs’ complaint sought a declaration that Section 41-5-25 of  
6 the Act did not prevent Defendant from accepting the late surcharge and recognizing  
7 DaVita as a qualified health care provider from June 2017 to December 2017, and  
8 ordering Defendant to do so. Plaintiffs explain that the purpose of their claim was to  
9 obtain de novo review of the Act, without any deference to Defendant’s  
10 interpretation and implementation of it. This approach circumvented the typical  
11 administrative process, a tactic which New Mexico courts have repeatedly looked at  
12 with disfavor.

13 {6} “The district court is vested with broad discretion to grant or refuse claims for  
14 declaratory relief.” *Headen v. D’Antonio*, 2011-NMCA-058, ¶ 6, 149 N.M. 667, 253  
15 P.3d 957 (internal quotation marks and citation omitted). Our review is thus limited  
16 to whether the district court abused that discretion. *Id.* “[E]ven when we review for  
17 an abuse of discretion, our review of the application of the law to the facts is

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<sup>2</sup>We do not need to answer Defendant’s contention that Plaintiffs lack standing to sue for declaratory judgment. This is because, even if we were to assume, without deciding, that Plaintiffs have standing, we still affirm dismissal of their claim.

1 conducted de novo. Accordingly, we may characterize as an abuse of discretion a  
2 discretionary decision that is premised on a misapprehension of the law.” *Harrison*  
3 *v. Bd. of Regents of Univ. of N.M.*, 2013-NMCA-105, ¶ 14, 311 P.3d 1236 (internal  
4 quotation marks and citations omitted).

5 {7} A declaratory judgment action may be appropriate for challenging  
6 administrative decisions “when the matter at issue (1) is purely legal, (2) requires no  
7 specialized agency fact-finding, and (3) there is no exclusive statutory remedy.” *New*  
8 *Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 12, 149 N.M. 42, 243 P.3d  
9 746. However, our Supreme Court has cautioned against using declaratory judgment  
10 claims to review administrative actions

11 if such an approach would foreclose any necessary fact-finding by the  
12 administrative entity, discourage reliance on any special expertise that  
13 may exist at the administrative level, disregard an exclusive statutory  
14 scheme for the review of administrative decisions, or circumvent  
15 procedural or substantive limitations that would otherwise limit review  
16 through means other than a declaratory judgment action.

17 *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 15, 142 N.M. 786, 171 P.3d 300. And  
18 even if the issue in the case was purely legal, our Supreme Court has “held that a  
19 party who initiated the appeals process in an administrative action could not use a  
20 declaratory judgment action to circumvent the requirements of an administrative  
21 appeal.” *New Energy Econ., Inc.*, 2010-NMSC-049, ¶ 12. These limitations “on the  
22 use of the declaratory judgment action respect the role of each branch of government

1 in the constitutional scheme and the administrative processes put in place by the  
2 Legislature.” *Id.* ¶ 14.

3 {8} Here, Plaintiffs sought to circumvent those limitations by foreclosing  
4 necessary fact-finding by OSI and discouraging the district court’s reliance on  
5 Defendant’s administrative expertise. First, although Plaintiffs construe the issue in  
6 this case as a purely legal one—an interpretation of the Act—that is far from true.  
7 Even though the parties stipulated to facts during administrative proceedings, each  
8 of their recitations of those facts differ on appeal. Some facts are still being argued  
9 over, such as whether Plaintiffs’ failure to collect the necessary surcharge was a  
10 “ministerial” error, or whether Plaintiffs in fact collected the surcharge but failed to  
11 transmit it to Defendant. The parties also engage in lengthy disagreements over  
12 OSI’s prior practices under the Act regarding accepting late surcharges. These  
13 factual disputes and contentions are integral to this case, and thus a declaratory  
14 judgment claim—a tool Plaintiffs concede they used in order to avoid determinations  
15 during the administrative process—improperly circumvents the requirements of an  
16 administrative appeal.

17 {9} Second, even if this case was limited to a purely legal question, “[w]hen an  
18 agency addresses a question of law by construing or applying a particular statute,  
19 courts will grant some deference to legal determinations that fall within agency  
20 expertise.” *Chavez v. Mountain States Constructors*, 1996-NMSC-070, ¶ 21, 122

1 N.M. 579, 929 P.2d 971. Plaintiffs do not dispute that OSI has expertise in  
2 determining and collecting the appropriate surcharge due under the Act—it is the  
3 only entity that does so. *See* § 41-5-25. Defendant is accordingly owed some  
4 deference, of course while being mindful that courts “are not bound by the agency’s  
5 interpretation and . . . may substitute [their] own independent judgment for that of  
6 the agency if the agency’s interpretation is unreasonable or unlawful. *Albuquerque*  
7 *Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regul. Comm’n*, 2010-NMSC-013,  
8 ¶ 51, 148 N.M. 21, 229 P.3d 494 (omission, internal quotation marks, and citation  
9 omitted). Plaintiffs make it abundantly clear that the purpose of their declaratory  
10 judgment claim was to avoid any deference that may have been owed to OSI’s  
11 interpretation of the Act. In doing so, their use of a declaratory judgment action falls  
12 squarely within the warning enunciated in *Smith*. *See* 2007-NMSC-055, ¶ 15. Thus,  
13 we conclude that it was not error for the district court to dismiss Plaintiffs’  
14 declaratory judgment claim and instead hear the case under its appellate jurisdiction.

15 {10} The only justification Plaintiffs offer to convince us that they should have  
16 been permitted to pursue their declaratory judgment claim is that procedural due  
17 process entitles them to de novo review of the statute, without any deference to the  
18 agency. However, procedural due process requires sufficient review by the judiciary  
19 of “whether the litigant received a fair hearing and whether the law was correctly  
20 applied.” *Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶ 49,

1 118 N.M. 470, 882 P.2d 511. Plaintiffs have provided us with no reason to believe  
2 their declaratory judgment claim entitles them with even greater procedural due  
3 process than that typically owed under an administrative appeal. And Plaintiffs have  
4 not appealed from the district court's decision to affirm the administrative  
5 proceedings such that they could argue that review was insufficient. Therefore, given  
6 all the reasons laid out above, we conclude that the district court did not abuse its  
7 discretion by dismissing Plaintiffs' declaratory judgment claim.

8 **CONCLUSION**

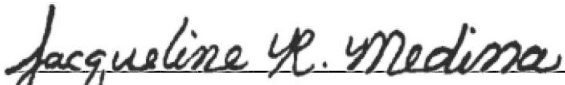
9 {11} For the reasons set forth above, we affirm the district court's order dismissing  
10 Plaintiffs' declaratory judgment claim.

11 {12} **IT IS SO ORDERED.**

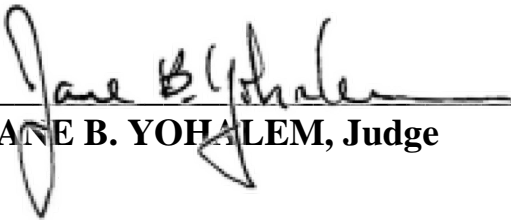


12  
13 **SHAMMARA H. HENDERSON, Judge**

14 **WE CONCUR:**



15  
16 **JACQUELINE R. MEDINA, Judge**



17  
18 **JANE B. YOHALEM, Judge**