

**IRVINE V. ST. JOSEPH HOSP., 1985-NMSC-041, 102 N.M. 564, 698 P.2d 434 (S. Ct. 1985)**

**JAMES SCOTT IRVINE, Petitioner,  
vs.  
ST. JOSEPH HOSPITAL, INC., MARVIN SACHS, DOYLE SIMMONS,  
M.D., H. J. MURRELL, M.D., and X-RAY ASSOCIATES,  
P.A., Respondents.**

No. 15663

SUPREME COURT OF NEW MEXICO

1985-NMSC-041, 102 N.M. 564, 698 P.2d 434

April 16, 1985

Original Proceeding on Certiorari, Gerald R. Cole, District Judge

**COUNSEL**

Steven E. Schonberg, Paul Livingston, Steven E. Schonberg, P.C., Albuquerque, New Mexico, Louis S. Marjon, Albuquerque, New Mexico, For Petitioner.

Richard C. Civerolo, Carl J. Butkus, Civerolo, Hansen & Wolf, P.A., Albuquerque, New Mexico, For Respondent St. Joseph Hospital.

J. E. Casados, Ellen M. Kelly, Gallagher & Casados, P.C., Albuquerque, New Mexico, for Marvin Sachs.

W. Robert Lasater, Jr., Mark C. Meiering, Rodey, Dickason, Sloan, Akin & Robb, P.A., Albuquerque, New Mexico, For Doyle Simmons, M.D. and H. J. Murrell, M.D.

Bruce D. Black, Campbell, Byrd & Black, P.A., Santa Fe, New Mexico, For X-Ray Associates, Inc.

**JUDGES**

WILLIAM R. FEDERICI, Chief Justice, DAN SOSA, JR., Senior Justice, WILLIAM RIORDAN, Justice, HARRY E. STOWERS, Jr., Justice, MARY C. WALTERS, Justice

**OPINION**

**ORDER**

{1} The writ of certiorari heretofore issued by this Court is quashed as having been improvidently granted. The only issue raised by petitioner in this cause was the construction and constitutionality of the three year statute of limitations of the Medical Malpractice Act. NMSA 1978, § 41-5-13 (Repl. Pamp.1982). **Kern v. St. Joseph Hospital, Inc.**, 102 N.M. 452, 697 P.2d 135 (1985), disposed of this issue. Petitioner did not present or preserve for review the issue of fraudulent concealment {\*565} in either the Court of Appeals or this Court.

{2} In the event of any conflict between **Kern** and this cause, **Kern** shall control. This order together with the opinion of the Court of Appeals shall be published. 102 N.M. 572, 698 P.2d 442 (1985).

{3} IT IS SO ORDERED.

WILLIAM R. FEDERICI,

Chief Justice

DAN SOSA, Jr.,

Senior Justice

WILLIAM RIORDAN,

Justice

HARRY E. STOWERS, Jr.,

Justice

MARY C. WALTERS,

Justice