

# NEW MEXICO INJURY ATTORNEY BLOG

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## **Over-Served Intoxicated Patrons May Bring Their Own New Mexico Dram Shop Claims for Injuries**

Dram shop liability has been pretty clearly established in New Mexico for quite some time. Under the dram shop laws, a bar or restaurant may be held liable for the over-service of alcohol to a patron who later causes injuries and other damages suffered by innocent third parties.

Often the over-intoxicated patron also suffers injuries and even wrongful death. The injuries to both the innocent third party as well as the over-served patron most frequently occur in car accidents. The question that most often comes up is whether the over-served patron has a claim against the bar or restaurant for its negligent over-service of alcohol.

In the past, and in many states still, the over-served patron would have no claim against the bar or restaurant. Many states follow contributory negligence law in these types of cases. Under contributory negligence, any amount of fault on the part of the injured party will bar a personal injury claim against even a vastly more negligent defendant.

New Mexico on the other hand follows comparative negligence doctrine. Under comparative negligence, an injured party may still bring a claim despite his or her own negligence. However, any recovery for injuries and damages will be reduced proportionately to his or her own negligence or fault.

Even under comparative negligence standards, New Mexico courts were reluctant to allow claims by persons injured as a result of their own intoxication. However, that changed under the 2010 New Mexico Court of Appeals ruling in *Mendoza v. Tamaya*.

Under *Mendoza v. Tamaya*, no longer is an intoxicated person barred from making claims under dram shop theories of negligence. Instead, the court ruled that the principles of comparative negligence should be applied here as in all other cases of negligence and harm.

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The court basically stated that the law prohibiting an intoxicated person from bringing a claim were outdated in light of New Mexico's adoption of comparative negligence. The court did not buy into the defense's tired old argument that the plaintiff would be allowed to prosper his own negligent intoxication. The argument was particularly unpersuasive in that case as in many such cases where the person allegedly prospering from his own negligence was in fact killed in the accident.

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