

A04-485, A04-486, A04-487, A04-488, A04-489

STATE OF MINNESOTA

IN SUPREME COURT

**Isles Wellness, Inc., n/k/a Minneapolis Wellness, Inc.,
Mn Licensed Physical Therapists, Inc., n/k/a A Licensed
Physical Therapy, Inc., and Licensed Massage Therapists, Inc.,
n/k/a Twin Cities Licensed Massage Therapy, Inc.,**

Appellants,

vs.

**Progressive Insurance Co., a Delaware Corporation
doing business in the State of Minnesota,**

**Respondent (A04-485, A04-486,
A04-489),**

**Allstate Indemnity Co., a Delaware Corporation
doing business in the State of Minnesota,**

Respondent (A04-487, A04-488).

APPELLANTS' BRIEF AND APPENDIX

**MICHAEL J. WEBER
Atty. Reg. No. 0243267**

**WEBER LAW OFFICE
2801 Hennepin Ave. S., Ste. 200
Minneapolis, MN 55408
(612) 296-8080**

ATTORNEY FOR PETITIONERS

**RICHARD S. STEMPEL
Atty. Reg. No. 161834**

**STEMPEL & DOTY, PLC
41 Twelfth Ave. N.
Hopkins, MN 55343
(925) 935-0908**

ATTORNEY FOR RESPONDENTS

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STATEMENT OF THE LEGAL ISSUE

Are Respondents able to use the corporate practice of medicine doctrine (“CPMD”) to avoid paying Appellants’ reasonable and necessary healthcare services—in particular, chiropractic services—where the services were provided before the Supreme Court’s 2005 decision regarding the CPMD?

So far, the lower courts’ decisions on this question have been contingent on their resolution of the overarching issue, i.e., the applicability of the CPMD to a particular healthcare profession.¹ After the Supreme Court clarified the applicability of the CPMD to chiropractic in 2005, the Court remanded this issue to the court of appeals. But the court of appeals did not independently decide the issue, interpreting the Supreme Court’s decision as deciding this issue.

Granger v. Adson, 190 Minn. 23, 250 N.W. 722 (1933)

Larson v. Dunn, 460 N.W.2d 39 (Minn. 1990)

State Farm Mut. Auto. Ins. Co. v. Mallela, 175 F. Supp.2d 401 (E.D.N.Y. 2001)

Lew Bonn Co. v. Herman, 271 Minn. 105, 135 N.W.2d 222 (1965)

STATEMENT OF THE CASE

This case arises out of a dispute over payment of outstanding no-fault benefits between Appellants, which were healthcare clinics, and Respondents, automobile no-fault insurers. The procedural history of this case has resulted in the appellate courts considering the parties’ dispute through a two-step analysis. First, the courts considered whether corporate practice of medicine doctrine (“CPMD”) was applicable to Appellants’ healthcare services, which the Supreme Court resolved with 2005’s *Isles Wellness, Inc. v.*

¹ The trial court initially ruled that the CPMD applies to all of the healthcare professions at issue and, as a result, decided the present issue in the affirmative (i.e., the trial court concluded that Respondents did not have to pay for Appellants’ outstanding claims, but could not recover those claims that had been paid). The court of appeals reversed the trial court’s decision regarding the CPMD. The court of appeals did not need to address the present issue because the court decided the CPMD was inapplicable to all of Appellants’ healthcare services (i.e., Respondents had no claim regarding Appellants’ compliance with the CPMD).

Progressive Northern Insurance Co. (“Isles Wellness #1”).² Second, the Supreme Court remanded the case to determine whether Respondents are required to reimburse Appellants for their healthcare services, despite the applicability of CPMD to chiropractic. This second step is now before the Supreme Court.

By way of background, Appellant healthcare clinics were in business from 2000 to 2003. Appellants were organized as regular Minnesota business corporations, owned by a single “lay” shareholder,³ with the business purpose of providing chiropractic, physical therapy, and massage therapy services. Appellants were “regular” corporations, as opposed to “professional” corporations, because Appellants did not elect to organize as professional firms under the Minnesota Professional Firms Act, Minnesota Statutes, Chapter 319B.

On cross motions for summary judgment, the trial court concluded as a matter of law that Minnesota has a “corporate practice of medicine doctrine” (“CPMD”) that applies to chiropractic, physical therapy, and massage therapy. Hinging its decision *solely* on Appellants’ supposed noncompliance with the CPMD, the trial court granted Respondents’ motion for partial summary judgment and dismissed Appellants’ claims for payment of Appellants’ healthcare services.⁴

Appellants appealed to the Minnesota Court of Appeals. Reversing the trial court’s decision regarding the applicability of the CPMD to the healthcare professions at

² See A[2]-1 to A[2]-29 (*Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513 (Minn. 2005) [hereinafter *Isles Wellness #1*]).

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants’ Appendix *infra*.

³ By “lay” shareholder, Appellants mean that the shareholder is not licensed as a chiropractor, physical therapist, massage therapist, or any other healthcare professional.

⁴ The trial court also dismissed Respondents’ counterclaims with prejudice. Because Respondents did not appeal that decision, the trial court’s dismissal of the counterclaims is permanent.

issue, a unanimous court of appeals reasoned as follows: (1) *Granger v. Adson*⁵ is distinguishable on its facts and limited in its holding; (2) *Granger* does not bar the corporate employment of chiropractors, physical therapists, and massage therapists; and (3) no statute supports a prohibition against the corporate practice of chiropractic, physical therapy, and massage therapy.

The Minnesota Supreme Court granted Respondents' subsequent petition for review, but only on the issue of whether the CPMD applied to chiropractic, physical therapy, and massage therapy. The Supreme Court unanimously affirmed the decision of the court of appeals that the CPMD does not apply to physical therapy and massage therapy. But, in a 4-3 decision reversing the court of appeals, the Supreme Court held that the CPMD does prohibit the corporate practice of chiropractic.

The Minnesota Supreme Court did not consider the issue of whether Appellants should be paid for their reasonable and necessary healthcare services, despite any CPMD. Therefore, the Supreme Court remanded the matter back to the court of appeals to resolve the issue.

On remand, however, the court of appeals did not independently analyze the remaining issue about payment of Appellants' healthcare claims. Instead, the court of appeals summarily determined that the Supreme Court had affirmed the trial court's summary judgment in its entirety, not only the part before the Supreme Court regarding the CPMD's applicability to chiropractic, but also the denial of Appellants' claims for payment of their healthcare services.

As a result, Appellants sought further review from the Minnesota Supreme Court. The Minnesota Supreme Court granted Appellants' petition for review.

⁵ 190 Minn. 23, 250 N.W. 722 (1933)

STATEMENT OF THE FACTS

APPELLANTS PROVIDED CHIROPRACTIC (AS WELL AS PHYSICAL AND MASSAGE THERAPY) ONLY THROUGH DULY LICENSED PROFESSIONALS WHO DIRECTLY PROVIDED ALL HEALTHCARE SERVICES AND WHO HAD AUTHORITY TO EXERCISE THEIR INDEPENDENT PROFESSIONAL JUDGMENT.

Appellants were organized as regular Minnesota business corporations.⁶ During all times relevant to this case, Jeanette Couf, a layperson (i.e., an individual who is not licensed as a healthcare practitioner), was the sole shareholder of each Appellant clinic.⁷

Prior to the fall of 2000, when considering the formation of her first clinic, Ms. Couf sought to ensure that her businesses would be ethical and legal, for example, by reviewing whether Minnesota law prohibited a layperson from owning a business that provided chiropractic services. Ms. Couf conferred with the Minnesota Board of Chiropractic Examiners (“Chiropractic Board”), which responded to Ms. Couf’s inquiry by letter. Significantly, the Chiropractic Board did not indicate that there was any prohibition on lay ownership of a chiropractic clinic; rather, the Board only advised Ms. Couf that she should obtain assistance and advice from legal counsel. Ms. Couf followed the Chiropractic Board’s advice and consulted the law firm of Fredrickson & Byron, P.A. Based on the Chiropractic Board’s letter and the lack of any mandate in Minnesota law, Ms. Couf’s counsel advised her that she could open a clinic as a layperson.⁸

With each Appellant clinic, Ms. Couf implemented additional specific measures seeking to ensure that Appellants operated in a legal and ethical manner and that

⁶ The term “regular” business corporations is meant to indicate Appellants were organized solely under the Minnesota Business Corporations Act, Minnesota Statutes, Chapter 302A, without election under the Minnesota Professional Firms Act, Minnesota Statutes, Chapter 319B.

⁷ See A[1]-21, A[1]-85, A[1]-94 to A[1]-95.

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants’ Appendix *infra*.

⁸ See A[1]-21 to A[1]-22.

Appellants' patients received appropriate healthcare services. These measures ensured that Appellants' licensed chiropractic doctors, physical therapists, and massage therapists were responsible for directly providing patient care, were able to exercise their independent professional judgment, and had complete authority over patient recordkeeping and billing. More specifically, only duly licensed health professionals conducted the following activities:⁹

1. Independently deciding about and directly providing the treatment for patients.¹⁰
2. Providing direct treatment to patients and performing the recordkeeping, coding, and billing related to their care. Moreover, after an outside billing service prepared patient billing statements, the health professionals reviewed and authorized submission of the bills to the appropriate insurers.¹¹
3. Training in newly hired professionals; Ms. Couf did not have any direct control over the training of licensed health professionals.¹²
4. Scheduling appointments for patients. The involvement of non-licensed employees, including Ms. Couf, in scheduling patients was limited to carrying out the direct instructions of the licensed health professionals and

⁹ Although the massage therapists are not licensed statewide, Appellants provide them with professional independence comparable to the chiropractors and physical therapists.

¹⁰ See RA[1]-79 to RA[1]-85, RA[1]-88 to RA[1]-89, RA[1]-91 to RA[1]-93, RA[1]-95, RA[1]-98 (Dr. Bernard); RA[1]-113 to RA[1]-117 (Dr. Castro); RA[1]-124 to RA[1]-127, RA[1]-129 (Gelfgat); RA[1]-140 to RA[1]-147, RA[1]-149 to RA[1]-154 (Dr. Pfeiffer); RA[1]-157 to RA[1]-159, RA[1]-161 to RA[1]-167, RA[1]-169, RA[1]-174 to RA[1]-175 (Romsaas); see also RA[1]-32 to RA[1]-33 (Couf).

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*.

¹¹ See *id.*; RA[1]-90 to RA[1]-100 (Dr. Bernard); RA[1]-103 to RA[1]-113 (Dr. Castro); RA[1]-149 to RA[1]-153 (Dr. Pfeiffer); RA[1]-181 to RA[1]-182 (D. & K. Matthews); RA[1]-185 to RA[1]-186a (D. Matthews); RA[1]-190 to RA[1]-193 (K. Matthews).

¹² See RA[1]-88 (Dr. Bernard); RA[1]-102 (Dr. Castro); RA[1]-148 (Dr. Pfeiffer); RA[1]-161 (Romsaas).

to calling current patients to remind them of scheduled appointments or to reschedule appointments that were missed.¹³

5. Creating, together with an independent billing service (but with no involvement of Ms. Couf), a multi-link code list, which simply linked the most commonly performed medical treatment modalities to guide the professionals' efforts to accurately and fairly bill their patients.¹⁴ In addition, at all times the professionals retained the authority to stray from the multi-link code list as needed.¹⁵

Many of Appellants' patients were entitled to no-fault benefits from Respondents and other insurers. Initially, for almost two years, Appellants and their patients were able to obtain payment from Respondents and other insurers for healthcare services covered by the patients' no-fault benefits.¹⁶

Beginning in approximately April 2002, however, Respondents failed to make any payments for, but did not formally deny, the no-fault claims on behalf of Appellants' patients. For over a year, until mid-2003, when Appellants finally began obtaining information by formal discovery, Respondents either failed to respond at all to Appellants' claims or simply stated there was an "ongoing investigation." Despite this

¹³ This is verified by the chiropractic doctors, healthcare practitioners, and other employees (*see* RA[1]-81 to RA[1]-82 (Dr. Bernard); RA[1]-89, RA[1]-91 to RA[1]-94 (Dr. Bernard); RA[1]-105, RA[1]-107 to RA[1]-108, RA[1]-113 (Dr. Castro); RA[1]-120 (Comeaux); RA[1]-125 to RA[1]-126 (Gelfgat); RA[1]-131 (Jackson); RA[1]-134 (Pettit); RA[1]-142 to RA[1]-143 (Dr. Pfeiffer); RA[1]-149, RA[1]-151 (Dr. Pfeiffer); RA[1]-157 to RA[1]-158 (Romsaas); RA[1]-163 to RA[1]-164, RA[1]-166 (Romsaas); RA[1]-176 to RA[1]-177 (Sinkfield)), as well as the patients (*see* RA[1]-49 (Aguilar); RA[1]-53 (Armstrong); RA[1]-58 (Green); RA[1]-63 (Rodriquez); RA[1]-67 (Samatar); RA[1]-70, RA[1]-72 (Stephens); RA[1]-77 to RA[1]-78 (Stokes)).

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*.

¹⁴ *See* RA[1]-162, RA[1]-170 (Romsaas); RA[1]-185, RA[1]-187 (D. Matthews); RA[1]-189 (K. Matthews); RA[1]-218 to RA[1]-219 (Dr. Reed).

¹⁵ *See id.*; RA[1]-90 to RA[1]-91 (Dr. Bernard); RA[1]-102 to RA[1]-104, RA[1]-108 to RA[1]-110, RA[1]-118 (Dr. Castro); RA[1]-137 to RA[1]-138 (Dr. Pfeiffer & Dr. Bernard).

¹⁶ *See* A[1]-95.

so-called “investigation,” Respondents did not request any information from Appellants. And, during this time, Appellants continued to submit claims, which Respondents neither paid nor formally denied.¹⁷

Not surprisingly, Respondents’ handling of these claims had a significant impact on Appellants, placing in limbo outstanding claims for numerous patients that ultimately totaled several hundred thousand dollars. Despite Respondents’ actions (for nearly two years until Appellants closed at the end of December 2003), Appellants continued to treat Respondents’ insureds and claimants in good faith, and the patients continued to receive their care from Appellants. Because Respondents had not been paying Appellants’ healthcare claims for months and months, Appellants determined that they had to do something to try to stay in business. Several of Appellants’ patients assigned their no-fault rights and benefits under their applicable automobile insurance policies to Appellants.¹⁸

¹⁷ See A[1]-25, A[1]-95. Respondents’ conduct contradicts the explicit statutory requirements of the Minnesota Fair Claims Practices Act. For example, Respondents failed to comply with the following: (1) provide notice to Appellants of the reason for nonpayment (and other information) by the statutory time period (60 days) so that they could correct any claims compliance issues; (2) provide notice of an investigation, reason for failure to complete the investigation within the statutory time period (60 days), and a reasonable time period for that investigation; and/or (3) pay one of more elements of a claim for which there is no good faith dispute. See Minn. Stat. § 72A.201, subds. 3-5 (2004); see also Minn. Stat. § 65B.54 (2004) (describing the Minnesota No-Fault Act’s 30-day deadline for payment of claims, or 15 days if an insurer elects to accumulate claims for up to a 31-day period). Instead, Respondents have refused payment of Appellants’ claims without a substantive explanation since approximately April 2002.

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants’ Appendix *infra*.

¹⁸ See A[1]-85 to A[1]-86, A[1]-95.

In mid-2003 Appellants initiated these cases against Respondents related to Respondents' failure to honor the patients' no-fault benefits.¹⁹ Appellants pursued the following claims: (1) breach of contract (specifically, the applicable insurance policies); and (2) violation of the Minnesota Fair Claims Practices Act.²⁰ Respondents answered and brought counterclaims against Appellants.²¹

It was only when Respondents were facing legal action for their unexplained failure to pay Appellants' claims for over a year that Respondents for the first time (and only through their answers, counterclaims, and discovery) provided their alleged justifications for denying the healthcare claims. Specifically, Respondents claimed the following bases for denying payments: (1) Respondents alleged Appellants failed to incorporate in compliance with the Minnesota Professional Firms Act (Minn. Stat. ch. 319B); (2) Respondents alleged Appellants failed to comply with a "corporate practice of medicine doctrine" in Minnesota, which Respondents claimed applied to all of Appellants' healthcare services; and (3) based solely on the highly questionable assertions of a few former disgruntled employees, assertions obtained under questionable means,²² Respondents alleged Appellants engaged in misrepresentation of material facts

¹⁹ Appellants initiated five cases. The parties later agreed that these five cases would represent and resolve all claims between the parties. (See A[1]-85 to A[1]-86, A[1]-95 (estimating the number of underlying patients involved to be 49).)

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*.

²⁰ See A[1]-3 to A[1]-7, A[1]-95.

²¹ See A[1]-15 to A[1]-18, A[1]-95.

²² Respondents took these statements in secret, without providing any notice to Appellants and without giving Appellants an opportunity to attend the questioning. (See RA[1]-195, RA[1]-207, RA[1]-217, RA[1]-221.) Instead, the statements should have been handled as a Rule 27 deposition under the Minnesota Rules of Civil Procedure. Appellants should have been able to object to the witnesses' speculation as well as Respondents' vague and often very suggestive/leading questioning.

This is especially true because Respondents knew the following: (1) Appellants had legal counsel for the case at that time; and (2) the witnesses were persons who had

and improper solicitation of patients.²³

In July 2003 Appellants brought a motion for partial summary judgment based on the following grounds: (1) Respondents were not contesting Appellants' healthcare claims on the merits, and Respondents violated the Minnesota No-Fault Automobile Insurance Act; (2) Respondents forfeited the ability to contest Appellants' claims because Respondents violated the Minnesota Fair Claims Practices Act, specifically, the statutory deadlines; and (3) Respondents lacked credible evidence to support their supposed grounds for denying Appellants' claims, and also those grounds were not legally valid reasons for denying payment.²⁴ Respondents brought their own motion for partial summary judgment based on their assertion that Appellants failed to comply with the "corporate practice of medicine doctrine" ("CPMD") and the Minnesota Professionals Firms Act.²⁵

"managerial responsibility" and "whose act[s] or omission[s] in connection with the matter may be imputed to the organization . . . or whose statement[s] may constitute an admission on the part of the organization." See Minn. R. Professional Conduct 4.2, Comment - 1985 (2004) (whether or not there is a formal proceeding, in the case of a represented organizational client, the rule prohibits an attorney from communicating with "persons having managerial responsibility" and "any other person [thus, including past employees] whose act or omission in connection with the matter may be imputed to the organization . . . or whose statement may constitute an admission on the part of the organization.") In fact, Respondents repeatedly and specifically attempt to use the statements in these transcripts as admissions against Appellants' interests.

²³ See A[1]-23 to A[1]-24.

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*.

²⁴ See A[1]-20 to A[1]-38. For example, Respondents lacked evidence of or valid grounds to claim improper solicitation of patients, and Respondents have no private cause of action under any "corporate practice of medicine doctrine" or under the Minnesota Professionals Firms Act.

²⁵ See A[1]-58 to A[1]-82.

The trial court issued an Order and Memorandum, with judgment being filed on January 21, 2004.²⁶ Several of the trial court's decisions hinged entirely on its conclusion that Appellants failed to comply with the CPMD: The court denied Appellants' motion for partial summary judgment, granted Respondents' motion for partial summary judgment, and dismissed Appellants' complaints all on this single basis. In addition, the trial court entirely dismissed Respondents' other defenses and counterclaims, including Respondents' claim that Appellants had engaged in some kind of misrepresentation.²⁷

Appellants appealed the trial court's decision adverse to them.²⁸ In a decision filed December 14, 2004, the Minnesota Court of Appeals reversed the trial court's decision and remanded for further proceedings. The court of appeals held that there was no case law or statutory law that prohibited the corporate employment of chiropractors, physical therapists, or massage therapists.²⁹

On February 23, 2005, the Minnesota Supreme Court granted Respondents' petition for review, solely on the issue of whether the CPMD applied to chiropractic, physical therapy, and massage therapy. In a decision filed on September 15, 2005, the Supreme Court decided as follows: (1) In a 4-3 decision, the Supreme Court reversed the decision of the court of appeals regarding the corporate practice of chiropractic; and

²⁶ Because of the significant impact of Respondents' refusal to pay any claims for nearly two years, Appellants ceased active operations at the end of December 2003 (*see Resp'ts' (Initial) Br. to Minn. Ct. App. at A-3, Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 689 N.W.2d 561 (Minn. Ct. App. 2004), *aff'd in part, rev'd in part*, 703 N.W.2d 513 (Minn. 2005)); however, Appellants continued to pursue their unpaid claims from Respondents.

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*.

²⁷ See A[1]-83 to A[1]-92.

²⁸ Respondents did not appeal their adverse decisions. Therefore, the trial court's decision to dismiss Respondents' counterclaims is now permanent. (*See A[1]-83 to A[1]-92.*)

²⁹ See A[1]-93 to A[1]-101 (*Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 689 N.W.2d 561 (Minn. Ct. App. 2004), *aff'd in part, rev'd in part*, 703 N.W.2d 513 (Minn. 2005)).

(2) the Court unanimously affirmed the decision of the court of appeals that the CPMD does not apply to physical therapy and massage therapy.³⁰ The Supreme Court did not consider the issue of whether Appellants should be paid for their otherwise valid chiropractic services despite any CPMD. Instead, recognizing that this issue remained, the Supreme Court remanded the case back to the court of appeals for its resolution.³¹

Instead of independently deciding this remaining issue, however, on remand, the court of appeals indicated it was deferring to the Supreme Court. In an Order Opinion filed February 23, 2006, the court of appeals stated that the Supreme Court had effectively already determined the issue on remand by affirming the trial court's summary judgment: "Thus, by affirming the district court the supreme court has held that the outstanding claims attributable to the corporate practice of chiropractic are void as against public policy. Accordingly, appellants cannot recover outstanding claims for chiropractic care."³²

In an order filed May 16, 2006, the Supreme Court granted Appellants' petition for further review of this issue.³³

³⁰ See A[2]-1 to A[2]-29 (*Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513 (Minn. 2005)).

For an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*.

³¹ See A[2]-4 n.4, A[2]-21 (*Isles Wellness, Inc.*, 703 N.W.2d at 516 n.4, 524).

³² See A[2]-30 to A[2]-33 (especially ¶ 2 at A[2]-31 to A[2]-32).

³³ See A[2]-34 to A[2]-35.

ARGUMENT

AS A MATTER OF LAW, RESPONDENTS CANNOT USE THE CORPORATE PRACTICE OF MEDICINE DOCTRINE TO AVOID PAYING APPELLANTS' FOR REASONABLE AND NECESSARY CHIROPRACTIC SERVICES.

From 2000 until Appellants' closure in 2003, Appellants provided reasonable and necessary chiropractic services only through appropriately licensed chiropractic doctors.³⁴ Even so, Respondents are attempting to avoid paying for Appellants' healthcare services. Without regard to how Appellants' chiropractic services were provided, Respondents are attempting to avoid payment by relying solely on the corporate practice of medicine doctrine ("CPMD") (as now resolved by *Isles Wellness #1*). Thus, Respondents are attempting to rely on an unintentional violation of the CPMD, even though Respondents lack a legal basis to use the doctrine, even though Appellants' chiropractic services were appropriately provided to patients, and even though Appellants' chiropractic services were provided before *Isles Wellness #1* was decided in 2005.

Under the facts of this case, Respondents are attempting to use a regulatory doctrine as a superficial/"blind" pretext to avoid their payment responsibilities—highlighted by Respondents' failure to cite any traditional ground for denying claims under the Minnesota No-Fault Automobile Insurance Act.³⁵ Despite multiple opportunities to do so, Respondents have failed to provide any legally valid basis under the No-Fault Act for denying payment of Appellants' chiropractic or other healthcare

³⁴ Appellants focus on chiropractic because in *Isles Wellness #1* held that the CPMD applied to only chiropractic, not physical therapy or massage therapy.

³⁵ See A[1]-24 to A[1]-25 (for an explanation regarding citations to the appendices, especially those from the briefs in *Isles Wellness #1*, see the note in the table of contents to Appellants' Appendix *infra*); see also Appellants' (Initial) Br. to the Minn. Ct. App. at A-33 to A-36, *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 689 N.W.2d 561 (Minn. Ct. App. 2004), *aff'd in part, rev'd in part*, 703 N.W.2d 513 (Minn. 2005). The Minnesota No-Fault Automobile Insurance Act is codified in Minnesota Statutes, Sections 65B.41 to 65B.71 (2004).

services.³⁶ Respondents' silence is deafening. Instead, Respondents attempt to rely solely on the CPMD, a legal doctrine that is unavailable to them as a matter of law, to avoid paying Appellants' healthcare claims.

On an appeal from summary judgment, the Minnesota Supreme Court is faced with two questions: (1) whether there are any genuine issues of material fact; and (2) whether the lower courts erred in their application of the law.³⁷ A motion for summary judgment is to be granted when the record shows that there is no genuine issue of material fact and that a party is entitled to a judgment as a matter of law. On appeal, the Court must view the evidence in the light most favorable to the party against whom judgment was granted.³⁸

³⁶ Specifically, if Respondents complied with the procedural requirements of the No-Fault Act, Respondents would not be able to deny Appellants' claims unless they met their burden of proving that the chiropractic services were not reasonable or necessary. As noted in by the court of appeals in *Wolf v. State Farm Ins. Co.*:

We do not agree with [the insurance company's] position that the burden of proof was on [the insured] presenting evidence on the issues of causation and necessity. An insured has a *right* to basic economic loss benefit under the Minnesota No-Fault Act, Minn. Stat. § 65B.46, subd. 1. Once an insurer receives reasonable proof of the fact and amount of loss realized, it has a *duty* to respond to an insured's claim in a timely manner. Minn. Stat. § 65B.54. Assuming [the insurance company] received reasonable proof of [the insured's] losses, the burden was on it to establish [the insured] was not entitled to benefits.

Wolf v. State Farm Ins. Co., 450 N.W.2d 359, 362 (Minn. Ct. App. 1990) (emphasis in original); see also *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 414 (Minn. Ct. App. 2000), *rev. denied*, (Minn. Apr. 18, 2000) ("An insurer becomes obligated to pay no-fault benefits when it receives reasonable proof of the fact and amount of loss realized."); note 17 *supra*.

³⁷ *State v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

³⁸ *Hickman v. SAFECO Ins. Co. of Am.*, 695 N.W.2d 365, 369 (Minn. 2005); *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). In their previous briefs, however, Respondents have ignored this basic summary judgment standard and presented their own distorted version of the "facts." Compare Appellants' [now Resp'ts'] Br. to Minn. Sup. Ct. at 1-3, 21-26, *Isles Wellness #1*, to Resp'ts' [now Appellants'] Br. to Minn. Sup. Ct. at 9-17, *Isles Wellness #1*.

In attempting to avoid payment of Appellants' chiropractic claims, Respondents specifically fail to cite even the most basic reason for denying or ending no-fault medical benefits. Specifically, Respondents do not allege Appellants' claims were unreasonable or unnecessary.³⁹ Because of this failure, there are no issues regarding whether the claims were reasonable and whether the healthcare services were necessary. By failing to meet their legal burden under the No-Fault Act, Respondents have effectively conceded that they have no legal basis for denying claims pursuant to the Minnesota No-Fault Automobile Insurance Act.

Instead, Respondents are relying entirely on attempts to assert the CPMD, despite its unavailability to insurers and other private parties. Respondents are hoping they can rely on the CPMD as a pretext to make an "end run" around their obligations under the No-Fault Act and the Minnesota Fair Claims Practices Act.⁴⁰ Respondents want a "silver bullet" that will relieve them of their substantive responsibilities under the No-Fault Act.⁴¹

But Respondents cannot use the CPMD as a pretext to avoid their responsibility to pay for Appellants' chiropractic claims. Respondents have neither standing nor a basis in public policy to use the CPMD to avoid paying Appellants' reasonable and necessary healthcare claims. This is especially true when Appellants hired licensed chiropractic

But, even without the more clear-cut summary judgment standard of *Hickman* and *Fabio*, Respondents' inaccurate "facts" should be disregarded: No genuine issue of material fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). A rational trier of fact could not find for Respondents because their distortions and inadequate evidence are deficient on the record as a whole. See Statement of Facts, pages 4-11 *supra*; Resp'ts' [now Appellants'] Br. to Minn. Sup. Ct. at 9-17, *Isles Wellness #1*.

³⁹ See Minn. Stat. § 65B.44, subd. 2(a) (2004).

⁴⁰ See, e.g., notes 17 & 36 *supra*.

⁴¹ See, e.g., note 36 *supra*.

doctors to directly and independently provide Appellants' reasonable and necessary chiropractic services.

I. RESPONDENTS LACK STANDING TO ASSERT CLAIMS AND DEFENSES AGAINST APPELLANTS BASED ON NONCOMPLIANCE WITH THE CORPORATE PRACTICE OF MEDICINE DOCTRINE.

Notwithstanding their highly questionable motives for doing so, Respondent insurance companies lack standing to even assert claims and defenses based on the CPMD (and any related claims/defenses based on the Minnesota Professional Firms Act and professional licensing acts). Respondents' grounds for denying payment are not sufficient under Minnesota law: (1) The CPMD does not provide Respondents with a private cause of action or defense; and (2) Respondents lack standing to attack Appellants' employment (and other) contracts. As a result, Respondents cannot rely on the CPMD as a pretext to avoid their obligation to pay Appellants' chiropractic claims.

A. Respondents Lack A Private Cause Of Action Or A Defense Based On The Corporate Practice Of Medicine Doctrine.

Respondents lack authority to assert claims and defenses based on noncompliance with the CPMD. The CPMD is a regulatory law that neither contemplates a private cause of action nor exists to protect Respondent insurance companies, especially under the facts of this case. Respondents' insureds and claimants received everything for which they bargained. They received reasonable and necessary chiropractic services independently and directly provided by appropriately licensed chiropractic doctors. Under Minnesota law and the circumstances of this case, Respondents lack standing to privately enforce the CPMD.

Minnesota law is quite clear that Respondents lack standing for a private cause of action under the CPMD, because neither common law nor statute provide Respondents with that right. There is no private action or defense under common law without specific

Minnesota case law providing that right.⁴² Likewise, CPMD is based on professional licensing statutes, and “a statute does not give rise to a civil cause of action unless it imposes liability explicitly or by clear implication.”⁴³ As a professional licensing doctrine, the CPMD is a regulatory law that is not enforceable by private parties, especially by insurance companies that are not the intended beneficiaries of the doctrine. Rather, government authorities, such as law enforcement and licensing agencies, are solely responsible for enforcing the CPMD and similar licensing regulatory laws.⁴⁴

Providing Respondent insurance companies with a private cause of action under the CPMD makes little sense given the CPMD’s purpose. Related to the CPMD’s origins, the primary purpose of the CPMD is to protect the practitioner-patient relationship and the independence of the practitioner’s judgment; the CPMD did not originate to protect insurance companies.⁴⁵ Because Respondent insurance companies are neither patients nor chiropractic doctors, they are not the intended beneficiaries of the

⁴² See *Bruegger v. Faribault County Sheriff’s Dep’t*, 497 N.W.2d 260, 262 (Minn. 1993); see also *H.J., Inc. v. Northwestern Bell Corp.*, 420 N.W.2d 673, 676 (Minn. Ct. App. 1988).

⁴³ See *Larson v. Dunn*, 460 N.W.2d 39, 47 n.4 (Minn. 1990); see also *Larsen v. Wright County Human Serv. Agency*, 526 N.W.2d 59, 61 (Minn. Ct. App. 1995), *rev. denied*, (Minn. Mar. 14, 1995).

The *Isles Wellness #1* Court noted that the CPMD is based, at least in part, on Minnesota professional licensing laws. Based on the Court’s reasoning, under the Chiropractic Practice Act, a general corporation is prohibited from offering chiropractic services because the corporation by definition cannot complete the extensive chiropractic training and licensure requirements. See A[2]-5 to A[2]-6 (*Isles Wellness, Inc.*, 703 N.W.2d at 517); see also Minn. Stat. §§ 148.01-.106 (2004) (Chiropractic Practice Act).

⁴⁴ See, e.g., Minn. Stat. §§ 148.01-.106 (2004) (Chiropractic Practice Act); Minn. Stat. ch. 319B (2004) (Professional Firms Act).

⁴⁵ The purpose of the CPMD is very similar to the purposes of the Minnesota Professional Firms Act. See Minn. Stat. § 319B.01, Reporter’s Notes – 1997, in *West’s Minnesota Corporation, Limited Liability Company, and Partnership Laws* at 602-06 (2003) (discussed in *Mutual Service Casualty Insurance Co. v. Midway Massage, Inc.*, 695 N.W.2d 138, 142 (Minn. Ct. App. 2005), *rev. denied*, (Minn. June 14, 2005)).

CPMD. Therefore, based on the purpose of the CPMD, Respondents do not have a basis to assert standing to enforce the CPMD.

Respondents' argument for standing to enforce the CPMD is misplaced. Respondents have a tenuous connection to the CPMD. Thus, if successful, Respondents' argument would similarly support the ludicrous result of finding implied private causes of action in nearly each and every statute and common law doctrine on the books. Based on Respondents' argument, these implied causes of action would exist, regardless of the particular circumstances of the underlying law and regardless of the interest of the party seeking its enforcement.

Importantly, Minnesota law contradicts Respondents' position: Each and every law is not enforceable through a private cause of action. For example, regulatory laws and criminal laws do not give rise to a private cause of action, unless a law reveals its intent to do so explicitly or by clear implication. In fact, the Minnesota Supreme Court has refused to find a civil cause of action related to statutes (real estate broker licensing and criminal laws) that are very analogous to the CPMD and its underlying statutes.⁴⁶ Similarly to the Supreme Court's analysis of these laws, Respondents have no private cause of action under the CPMD.

Furthermore, it is not coincidence that, in all of the Minnesota cases in which the Supreme Court has previously contemplated prohibitions on the corporate practice by

⁴⁶ See *Semrad v. Edina Realty*, 493 N.W.2d 528, 532 (Minn. 1992) (finding no civil cause of action under the Real Estate Brokers Act); *Larson*, 460 N.W.2d at 47 n.4 (finding no civil cause of action under a criminal statute). Likewise, the court of appeals has applied the Supreme Court's reasoning to other similar statutes regarding daycare licensing and entertainment agent licensing. See *Haage v. Steies*, 555 N.W.2d 7 (Minn. Ct. App. 1996) (holding a musician had no standing to sue an entertainment agent for return of commissions based solely on a claim that the agent was unlicensed and therefore not entitled to the commissions); *Larsen*, 526 N.W.2d at 61-62 (holding no civil cause of action against the county for failing to inspect and confirm a licensed daycare's insurance coverage).

licensed professionals, the disputes have involved the governmental agencies that actually have legal authority to enforce the doctrine and its underlying licensing laws:

- *In re Otterness* involved the Minnesota State Board of Law Examiners enforcing its licensing rules⁴⁷;
- *Granger v. Adson* involved a layperson's attempt to enjoin the Minnesota Board of Medical Examiners from enforcing its licensing laws⁴⁸;
- *Williams v. Mack* involved "defendants constituting the Minnesota State Board of Optometry" attempting to enforce its licensing laws⁴⁹; and
- *State v. Goodman* involved the Minnesota Attorney General attempting to prosecute a business for violating the optometry licensing laws.⁵⁰

These Minnesota cases neither explicitly nor implicitly provide insurance companies with standing to use the CPMD as a claim or defense to avoid paying healthcare claims. Instead, they further support that Respondents lack standing to enforce the CPMD.

Although Minnesota has no reported cases in which insurance companies have attempted to avoid their responsibility to pay no-fault benefits based solely on the CPMD, there are two important cases that support the reasoning of Appellants' position: *Haage v. Steies*⁵¹ (involving an analogous situation considered by the Minnesota Court of Appeals) and *State Farm Mutual Automobile Insurance Co. v. Mallela* ("*Mallela (2001)*")⁵² (involving a nearly identical situation considered by a New York federal district court).

Haage v. Steies involves a different profession (specifically, entertainment agents), but an analogous attempt by a party to avoid paying for otherwise appropriately provided services. In *Haage*, a musician attempted to sue his former entertainment agent for all of

⁴⁷ See *In re Otterness*, 181 Minn. 254, 232 N.W. 318 (1930).

⁴⁸ See *Granger v. Adson*, 190 Minn. 23, 250 N.W. 722 (1933).

⁴⁹ See *Williams v. Mack*, 202 Minn. 402, 403, 278 N.W. 585, 586 (1938).

⁵⁰ See *State v. Goodman*, 206 Minn. 203, 288 N.W. 157 (1939).

⁵¹ 555 N.W.2d 7 (Minn. Ct. App. 1996).

⁵² 175 F. Supp.2d 401 (E.D.N.Y. 2001).

the commissions the musician paid to the agent. The musician claimed that his agent was not entitled to the commissions because the agent was unlicensed in violation of Minnesota Statutes, Chapter 184. The Minnesota Court of Appeals rejected the musician's efforts, holding that the musician had no standing to pursue a private cause of action under the relevant licensing statute.⁵³ For the same reason, Respondents lack authority to avoid paying Appellants' chiropractic claims.

If anything, Respondents have less of a basis for standing than the plaintiff musician in *Haage*, based on two reasons:

1. In *Haage*, even though the plaintiff was the client and direct recipient of the unlicensed professional services, the plaintiff could not recover the commissions. In the present case, Respondents were removed from the professional services; Respondents were not even the patients or clients of Appellants.
2. In *Haage*, even though the services at issue were provided directly by an unlicensed professional, the plaintiff could not recover the commissions. In the present case, licensed chiropractic doctors directly provided chiropractic services to Respondents' insureds and claimants. Respondents' claims of unlicensed services are not against the licensed practitioners; rather, Respondents' claims are once removed, being solely against Appellants, as the employers of the licensed chiropractic doctors.

The second case, *State Farm Mutual Automobile Insurance Co. v. Mallela* ("*Mallela (2001)*"), a federal case from New York, involves a situation nearly identical to the present case. Specifically, in *Mallela (2001)*, a New York federal district court did not allow insurance companies to avoid their obligations based on noncompliance with the CPMD and other legal formalities of corporate formation.⁵⁴

In *Mallela (2001)*, an insurance company sought to avoid paying no-fault claims based on violation of New York's CPMD. The court, taking all of the allegations as true in the insurer's complaint, dismissed the insurance company's cause of action. The court

⁵³ *Haage*, 555 N.W.2d at 8-10

⁵⁴ See *State Farm Mut. Auto. Ins. Co. v. Mallela*, 175 F. Supp.2d 401 (E.D.N.Y. 2001).

concluded that New York's professional corporation statute did not provide the insurance company with a private cause of action, and it should not give the insurance company a windfall by allowing it to avoid payment of claims for otherwise reasonable and necessary healthcare services provided by licensed professionals. To the extent there were legal violations, the statutes could be enforced by the appropriate authorities.⁵⁵

In fact, the New York federal court made an astute observation that is equally applicable to the present case:

If an insured receives reasonable and necessary medical services from a licensed practitioner who demands that the insured pay her directly rather than assign his right to benefits, the insured's right to payment from his insurer does not depend on whether his practitioner is employed by an entity that has [violated the CPMD].⁵⁶

The *Mallela (2001)* court concluded that the insurance company must pay the benefits regardless of whether the insureds assigned their rights to benefits and regardless of whether a clinic's corporate organization complies with the CPMD.⁵⁷

⁵⁵ *Mallela*, 175 F. Supp.2d at 412-18.

⁵⁶ *Mallela*, 175 F. Supp.2d at 415.

⁵⁷ *Mallela*, 175 F. Supp.2d at 415 (reasoning that an insured has the right to insurance benefits regardless of whether a practitioner's employer has complied with the CPMD; therefore, the employer likewise has that right if the insured has assigned those benefits).

Respondents might argue, as they have done previously, that *Mallela (2001)* has been replaced by a subsequent analysis in a recent decision of the New York Court of Appeals ("*Mallela (2005)*"). See *State Farm Mut. Auto. Ins. Co. v. Mallela*, 827 N.E.2d 758 (N.Y. 2005) (previously submitted to the Supreme Court by Respondents under letter dated April 4, 2005); see also Appellants' [now Resp'ts'] Reply Br. to Minn. Sup. Ct. at 6-7, *Isles Wellness #1*. To the contrary, after *Mallela (2001)*, the New York's Superintendent of Insurance implemented a regulation explicitly stating that a provider is not entitled to reimbursement of no-fault benefits if the provider does not meet New York state or local licensing requirements. N.Y. Comp. Codes R. & Regs. tit. 11, § 65-3.16(a)(12). The *Mallela (2005)* court held that after the effective date of that regulation (April 2002), insurance companies could pursue claims of fraud and unjust enrichment to recover funds paid to "fraudulent corporations"; however, the court held that insurance companies could not recover funds based on those same claims prior to the effective date of the regulation. *Mallela*, 827 N.E.2d at 761.

Even more significant, at the time of *Mallela (2001)*, New York clearly and explicitly had an applicable CPMD.⁵⁸ In contrast, during the time Appellants provided chiropractic services, *Isles Wellness #1* had not yet been decided. Therefore, unlike New York, Minnesota did not have a clear and explicit CPMD applicable to chiropractic.

As a result, Appellants' situation is even more straightforward than that in *Mallela (2001)*. As in *Mallela (2001)*, even if Appellant chiropractic clinics were wrongfully organized, Respondents lack authority to avoid paying for Appellants' reasonable and necessary healthcare services.

Appellants provided chiropractic services directly through duly licensed chiropractic doctors, and Respondents' insureds and claimants received the benefit of Appellants' services. Therefore, because Respondents lack standing to enforce the CPMD, Respondents are responsible for paying for Appellants' chiropractic claims.

B. Respondents Lack Standing To Assert That Appellants' Contracts Are Void.

Another of the confusing components of Respondents' case is that, in order for Respondents to succeed, they must also have standing to assert that Appellants' contracts are void. Respondents apparently are attempting to have the courts determine "any contract for practicing healing to be illegal, against public policy, and void."⁵⁹ From there, Respondents make an additional erroneous leap of logic in claiming that, as a result, they are relieved of paying Appellants' healthcare claims.

Therefore, *Mallela (2001)* and *Mallela (2005)* actually co-exist quite logically: Each case has a different result because of a significant amendment to New York regulatory law. An insurance company has no authority to withhold payment of healthcare services, based solely on noncompliance with the CPMD, without an explicit law providing that right. Respondents have no such explicit legal authority in Minnesota.

⁵⁸ See *New York v. John H. Woodbury Dermatological Inst.*, 85 N.E. 697 (N.Y. 1908) (adopting what amounted to the corporate practice of medicine doctrine); see also *Stern v. Flynn*, 278 N.Y.S. 598 (N.Y. Sup. Ct. 1935) (unlike Minnesota, prohibiting the corporate practice of optometry).

⁵⁹ See Appellants' [now Resp'ts'] Br. to the Minn. Sup. Ct. at 31, *Isles Wellness #1*.

Respondents are not even in the same position as the parties to the voided contract in *Granger v. Adson*. In *Granger*, the Supreme Court held that a layperson could not sustain an injunction against the medical board for alleged wrongful interference with an employment (or independent contractor) agreement between a lay person and a licensed physician. The Court concluded that the agreement, which was directly for the purpose of engaging in the unlicensed practice of medicine, was void.⁶⁰ But, unlike the parties in *Granger*, Respondents were not a party to Appellants' employment agreements, and they are not a state agency that regulates the relevant licensed professions. Respondents have no legal interest in Appellants' employment agreements, and therefore, they lack standing to claim that the employment agreements are void.

Likewise, Respondents cannot void their own insurance agreements with their insureds. Respondents remain obligated to pay benefits on behalf of their insureds, as required by their insurance agreements and the Minnesota No-Fault Act.⁶¹ Respondents' obligation is not impacted by Appellants' contracts. And the CPMD cannot apply in any way to the insurance agreements because Appellants were not parties to those agreements.

Significantly, Respondents fail to show several critical issues necessary to avoid payment of Appellants' claims: (1) what contracts are void as a result of the CPMD; (2) given that Respondents are not parties to Appellants' contracts, how do Respondents have standing to assert voidness of the particular contracts; and (3) how do Appellants' alleged voided contracts relieve Respondents of their obligations to pay for the reasonable and necessary healthcare services received by their insureds, as required by both Respondents' insurance agreements and the Minnesota No-Fault Act?

⁶⁰ See *Granger v. Adson*, 190 Minn. 23, 27, 250 N.W. 722, 724 (1933).

⁶¹ Moreover, Respondents and other insurance companies have paid healthcare claims directly to healthcare clinics, regardless of whether the clinics have assignments from patients.

Respondents are not able and do not show these critical issues. Therefore, in addition to lacking standing to enforce any noncompliance with the CPMD, Respondents also lack standing to make claims that Appellants' contracts are void. This is especially true to the extent that Respondents claim the voided contract would relieve Respondents from paying for Appellants' reasonable and necessary chiropractic services.

II. APPELLANTS' CONTRACTS ARE NOT CONTRARY TO PUBLIC POLICY, AND THEREFORE THE CONTRACTS SHOULD NOT BE VOID AS A MATTER OF LAW.

Respondents' public policy argument also fails. In actuality, Appellants' manner of providing chiropractic services complied with public policy. For example, Appellants provided chiropractic services in a manner that sought to preserve the practitioner-patient relationship and the independence of the chiropractor's judgment. Even so—and contrary to Minnesota law—Respondents broadly and indiscriminately assert that Appellants' healthcare claims are automatically void because of *Isles Wellness #1*.

In actuality, Minnesota law requires a more case-specific analysis to determine whether contracts are void on public policy grounds. In Appellants' case, it is not enough that *Isles Wellness #1* determined that the CPMD applied to chiropractic. Instead, the analysis must consider how Appellants specifically provided their chiropractic services, as well as the clarity of the law and public policy during the time those services were provided (i.e., before *Isles Wellness #1* had been decided).

Importantly, this legally-required analysis reveals that Respondents' argument fails for three reasons: (1) Appellants complied with existing public policy during the time Appellants' chiropractic services were provided, before *Isles Wellness #1* was decided; (2) even though *Isles Wellness #1* had not yet been decided, Appellants' chiropractic services actually complied with the CPMD's policy rationale later enunciated by the Court; and (3) despite any CPMD, there is no violation of public policy when Appellants' patients received appropriate chiropractic services, i.e., reasonable and necessary services provided directly and independently by appropriately licensed

chiropractic doctors. Therefore, because Appellants' chiropractic claims are neither contrary to public policy nor void, Appellants' healthcare claims are valid.

A. Appellants' Manner Of Providing Chiropractic Services Complied With Public Policy As It Existed Before *Isles Wellness #1* Was Decided.

Appellants' chiropractic services must be analyzed based on public policy in existence at the time the services were provided, in 2000 to 2003, before *Isles Wellness #1* had been decided. At that time, it was unclear whether CPMD applied to chiropractic. Considering the status of the law as well as Appellants' efforts to provide appropriate chiropractic services, Appellants should be considered in compliance with public policy.

In *Hart v. Bell*, the Minnesota Supreme Court noted that following mandatory test for determining whether a contract is void on public policy grounds:

The element of illegality must also be of such a nature that to enforce or recognize a transaction tainted thereby would be *clearly* contrary to the public policy and welfare. Not every illegality requires intervention for the preservation of public policy. . . . “[T]he power of courts to declare a contract void for being in contravention of sound public policy is a very delicate power and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt.”⁶²

Thus, for Appellants' contracts to be found void, the CPMD must have been applicable to chiropractic *without any doubt*. No matter how one interprets *Granger*⁶³ and *Williams*⁶⁴ together, until the *Isles Wellness #1* decision, there was doubt about the CPMD's applicability to chiropractic. And CPMD's applicability to chiropractic remained unclear from the time of Appellants' organization until Appellants closed in December 2003.

⁶² *Hart v. Bell*, 222 Minn. 69, 75-76, 23 N.W.2d 375, 379 (1946) (emphasis added) (regarding a corporate voting trust agreement) (quoting *Cole v. Brown-Hurley Hardware Co.*, 117 N.W. 746, 748 (Iowa 1908)); see also *Hollister v. Ulvi*, 199 Minn. 269, 280, 271 N.W. 493, 498-99 (1937) (regarding a law practice's contingency fee agreement).

⁶³ *Granger v. Adson*, 190 Minn. 23, 250 N.W. 722 (1933).

⁶⁴ *Williams v. Mack*, 202 Minn. 402, 278 N.W. 585 (1938).

Importantly, even though the issue was unclear, Appellants engaged in extensive efforts to organize their chiropractic clinics in a legal manner. Appellants sought assistance in their efforts from legal and governmental leaders. Specifically, Appellants consulted both a prominent Twin Cities law firm and the Minnesota Board of Chiropractic in an effort to ensure the legality of their corporate structures.

In 2000, however, Appellants and their advisors did not have the benefit of the Supreme Court's analysis in *Isles Wellness #1* (issued in 2005). The history of this case demonstrates Appellants' predicament. If the applicability of the CPMD to chiropractic were clear and free from doubt, a unanimous court of appeals and three of seven Supreme Court Justices would not have similarly struggled with these issues and come to a conclusion contrary to the majority's 2005 decision in *Isles Wellness #1*.

Significantly, Appellants did not limit their efforts in 2000 to attempting to correctly analyze the applicability of the CPMD to chiropractic. Instead, Appellants proactively implemented substantial measures to preserve what Appellants identified as valid public policy considerations. For example, Appellants implemented measures to ensure that its chiropractic services were directly provided by licensed chiropractic doctors who were able to exercise independent judgment.

Considering a doctrine of unclear applicability, Appellants tried to do what was right, as apparent from the specific facts of this case and as recognized in such cases as *Hart v. Bell*. In 2000 Appellants were unable to foresee how the appellate courts would five years later resolve the applicability of CPMD to chiropractic. Thus, during Appellants' active operations, which ended before the Minnesota Supreme Court's 2005 *Isles Wellness #1* decision, the applicability of the CPMD to chiropractic was not free from doubt.

Consequently, under Minnesota law, Appellants' provision of chiropractic services did not violate public policy.

B. Appellants Provided Chiropractic Services According To CPMD's Policy Rationale, Even Though That Policy Rationale Was Not Enunciated Until The 2005 *Isles Wellness #1* Decision.

Although the chiropractic portion of Appellants' business organization was subsequently determined in *Isles Wellness #1* to be in noncompliance with the CPMD, Appellants' specific manner of providing chiropractic services actually complied with the CPMD's underlying public policy considerations. Of course, as discussed, *Isles Wellness #1* had not been decided during Appellants' active operations. But Appellants' provision of chiropractic services ended up being in compliance with the CPMD's public policy bases enunciated in that decision. The *Isles Wellness #1* Court noted that the CPMD's public policy considerations include: (1) maintaining independence of judgment of the chiropractic doctor; (2) preventing commercial exploitation of health care practices; and (3) preventing a chiropractic doctor's loyalty to patient and employer from being in conflict.⁶⁵ Even though Appellants did not predict the ultimate holding of *Isles Wellness #1*, Appellants independently identified and sought to address the same policy considerations identified in the decision. Appellants intentionally set up their chiropractic services so that they would not violate these policy considerations. Therefore, Appellants' healthcare services complied with public policy, and their claims should not be void.

Related to this, Appellants' provision of healthcare services was diametrically different than that which resulted in a voided employment agreement in *Granger*. In *Granger*, a layperson was himself actively engaging in the unlicensed practice of medicine. The layperson was the person having direct patient contact and providing medical consultations without a license.⁶⁶ This conduct was clearly illegal and a violation of the medical licensing statute, in the same way that driving without a driver's license is illegal. Under these circumstances, voiding the contract in *Granger* makes

⁶⁵ See A[2]-6, A[2]-20 (*Isles Wellness, Inc.*, 703 N.W.2d at 517, 524).

⁶⁶ *Granger v. Adson*, 190 Minn. 23, 24, 250 N.W. 722, 722-23 (1933).

sense: The conduct was clearly illegal, and the contract was likewise clearly contrary to public policy.

Unlike *Granger*, however, Appellants operated so that only licensed healthcare professionals had direct patient contact. Similarly, Appellants' healthcare professionals had freedom to exercise their independent professional judgment.⁶⁷ What is even more significant, Appellants did not employ anyone in the two healthcare professions for which then-existing Minnesota law explicitly prohibited their corporate practice: physicians (explicitly addressed in *Granger*) and dentists (explicitly addressed in Minnesota Statutes, Section 150A.11, Subdivision 1 (2004)). Appellants employed only chiropractors, physical therapists, and massage therapists. At the time, none of these three professions had been the subject of an explicit prohibition on their corporate practice, not in statute or case law.

Under these circumstances, Appellants' contracts should not be void.

C. Under Minnesota Law, Despite Any CPMD, Appellants' Healthcare Claims Are Valid When Duly Licensed Chiropractic Doctors Provided Appropriate Chiropractic Services.

Before voiding contracts as contrary to public policy, Minnesota law requires an analysis of the significance of any legal violation. In *Hart v. Bell*, the Supreme Court discussed a legal violation—analogue to Appellants' noncompliance with the CPMD—that did not result in a voided contract: “For example, a violation of the manifold specifications of a modern building ordinance was held by the Massachusetts supreme court not to require such intervention where the defendant had the benefit of a well-constructed building erected substantially in accordance with the building contract.”⁶⁸

⁶⁷ In fact, Appellants' provision of chiropractic services was consistent with the allowed employment arrangement approved by the *Williams* Court. See *Williams v. Mack*, 202 Minn. 402, 407, 278 N.W. 585, 588 (1938) (“When the purchaser of eyeglasses has the services of a competent licensed optometrist in selecting and fitting them to his eyes, he has had all the benefits the law intended.”).

⁶⁸ *Hart*, 222 Minn. at 75, 23 N.W.2d at 379.

Likewise, Appellants had licensed chiropractic doctors directly and independently provide patients with reasonable and necessary chiropractic services. Under these circumstances, Respondents' insureds and claimants received appropriate chiropractic services from Appellants, despite any CPMD. Thus, the insureds and claimants received what they bargained for: chiropractic care substantially in compliance with Minnesota law. Under these circumstances, based on the reasoning of *Hart v. Bell*, Appellants' healthcare claims should not be void.

The Supreme Court reiterated its reasoning in *Lew Bonn Co. v. Herman*.⁶⁹ In *Lew Bonn Co.*, a contractor was hired to perform electrical work. The contractor, however, failed to file plans and specifications for electrical installations, as required by a local building code. But the contractor's legal violation did not place the health and safety of the public at risk, and the electrical work was otherwise in full compliance with the building code. Therefore, the Court wisely held that the illegality did not cause the contract to be void.⁷⁰

Based on similar reasoning applied to Appellants' case—provided a patient receives competent, reasonable, and necessary chiropractic services from a duly licensed chiropractic doctor—there is no reason to void any contract. To do otherwise could provide Respondents with a windfall and wrongly punish Appellants. This is definitely true in Appellants' case, especially when the facts are reviewed in a light most favorable to Appellants.

D. The Only Conduct In This Case Contrary To Public Policy Is Respondents' Attempt To Avoid Their Financial, Contractual, And Legal Obligations.

If any conduct in this case is against public policy, it is Respondents' attempt to avoid their financial and contractual obligations. Respondents' position is contrary to

⁶⁹ *Lew Bonn Co. v. Herman*, 271 Minn. 105, 135 N.W.2d 222 (1965).

⁷⁰ *Lew Bonn Co.*, 271 Minn. at 105-10, 135 N.W.2d at 223-26.

justice. This is especially true given that, as part of Respondents' efforts, Respondents violated clear and explicit Minnesota laws. Specifically, since early 2002, Respondents have not complied with the requirements for responding to Appellants' claims, most notably, the deadlines required by the Minnesota Fair Claims Practices Act.⁷¹

A decision favorable to Respondents would unjustly result in a potentially huge windfall for Respondents, not only in this matter, but also related to other chiropractic clinics. Respondents would likely attempt to use any decision in their favor to deny payment to other regular/"lay" chiropractic clinics in existence before the Supreme Court's *Isles Wellness #1* decision. Similarly, Respondents would likely pursue causes of action seeking reimbursement of claims already paid to these pre-existing clinics for otherwise appropriate chiropractic services.⁷² Significantly, Respondents' potential windfall would not be based on a finding that healthcare services were unreasonable or unnecessary.

Moreover, this windfall would not be based on clinics' failure to provide healthcare services directly through licensed healthcare professionals. Rather, based on the facts of this case, Respondents' windfall would be based solely on a superficial

⁷¹ See note 17 *supra*.

⁷² Respondents and/or their counsel have been involved in at least two other cases asserting almost identical claims: (1) *Mutual Service Casualty Insurance Co. v. Midway Massage, Inc.*, 695 N.W.2d 138 (Minn. Ct. App. 2005), *rev. denied*, (Minn. June 14, 2005); and (2) *Allstate Ins. Co., et al. v. Sport Fit, Inc., et al.*, Hennepin County Court File No. MC 04-009996. Furthermore, *Sport Fit, Inc.*, sheds additional light on Respondents' tactics. In *Sport Fit, Inc.*, which is directly related to the present case before the Court, Respondents and their counsel re-sued Appellants using the same claims and the same nucleus of facts. The trial court has determined that *res judicata* applies to at least some of Respondents' claims, but the court has struggled with exactly how much of Respondents' case should be dismissed.

analysis of a corporation's formal business organization, without regard to how chiropractic services are actually provided.⁷³

In addition, Respondents might then move onto the next logical target: trying to use this same argument to get out of paying pain and suffering and other noneconomic tort damages in a personal injury claim. Specifically, if claimants' otherwise reasonable and necessary chiropractic services were not reimbursable solely because of the CPMD, Respondents could then argue that claimants have not met the most common statutory threshold (i.e., \$4,000 of healthcare expenses) for pursuing noneconomic damages.⁷⁴ This would be a "double windfall" for Respondents. And this potential "double windfall" would certainly be against public policy.⁷⁵

Respondents' efforts are not about justice. Respondents' efforts are not about preventing fraud or protecting their insureds and claimants. Respondents' efforts are about using a regulatory legal doctrine as a pretext to avoid their own financial obligations, regardless of whether the underlying healthcare services were reasonable and necessary and regardless of whether the services were directly provided by duly licensed chiropractic doctors.

Respondents' methods should not be encouraged. Respondents have relied on a doctrine that, notwithstanding its unclear applicability before *Isles Wellness #1*, Respondents have no legal authority to enforce. Based on this doctrine, Respondents have effectively delayed payment of Appellants' reasonable and necessary healthcare services—amounting to several hundred thousand dollars—for years. Respondents' tactics should not be allowed, whether based on the CPMD as in Appellants' case or

⁷³ *But see Stout v. AMCO Ins. Co.*, 645 N.W.2d 108, 114 (Minn. 2002) (under Minnesota law, "if there is to be a windfall either to an insurer or to an insured, the windfall should go to the insured").

⁷⁴ See Minn. Stat. § 65B.51, subd. 3(a) (2004) (noting that a person can meet the threshold by having \$4,000 of reasonable healthcare expenses).

⁷⁵ See note 73 *supra*.

whether Respondents seek to formulate another highly speculative legal ground, that once again is at best a pretext, at worst frivolous.

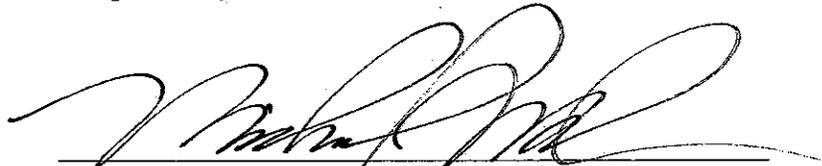
CONCLUSION

Significantly, until the decision of the Minnesota Supreme Court, Respondents were the only ones in this matter who had violated clear and explicit Minnesota laws. Since early 2002, Respondents have not complied with the requirements for responding to Appellants' claims, most notably, the deadlines required by the Minnesota Fair Claims Practices Act.⁷⁶

It would be a very unjust outcome if Respondents are able to get away with violating explicit laws, while Appellants lose their right to reimbursement of reasonable and necessary chiropractic services provided by duly licensed chiropractic doctors.

For the above reasons, Appellants respectfully request that the Court reverse the trial court's order, thereby allowing Appellants to obtain reimbursement from Respondents for Appellants' healthcare services.

Respectfully submitted,



Michael J. Weber (License No. 0243267)

Weber Law Office

2801 Hennepin Ave. S., Ste. 200

Minneapolis, MN 55408

Office (612) 296-8080

Fax (612) 825-6304

ATTORNEY FOR APPELLANTS

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⁷⁶ See note 17 *supra*.

CERTIFICATION OF BRIEF LENGTH

I certify that this brief conforms to the requirements of the Minnesota Rules of Civil Appellate Procedure, Rule 132.01, Subdivisions 1 and 3, for a brief produced with a proportional font.

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Michael J. Weber (License No. 0243267)
Weber Law Office
2801 Hennepin Ave. S., Ste. 200
Minneapolis, MN 55408
Office (612) 296-8080
Fax (612) 825-6304

ATTORNEY FOR APPELLANTS

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).