

Nos. A04-485, A04-486, A04-487, A04-488 and 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,*

v.

Progressive Insurance Co., a Delaware Corporation doing  
business in the State of Minnesota, Allstate Indemnity Co., a  
Delaware Corporation doing business in the State of Minnesota,  
*Respondents (A04-485, A04-486,  
A04-498),*

Allstate Indemnity Co., a Delaware Corporation doing business  
in the State of Minnesota,  
*Respondent (A04-487, A04-488).*

RESPONDENTS' REPLY BRIEF

MICHAEL J. WEBER (#0243267)  
WEBER LAW OFFICE  
2801 Hennepin Avenue South  
Suite 200  
Minneapolis, MN 55408  
(612) 296-8080

*Attorney for Appellants*

RICHARD S. STEMPEL (#161834)  
STEMPEL & DOTY, PLC  
41 Twelfth Avenue North  
Hopkins, MN 55343  
(952) 935-0908

*Attorney for Respondents*

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## STATEMENT OF THE LEGAL ISSUES

Are Appellants entitled to reimbursement for outstanding amounts billed when the Appellants were formed and operated in violation of the Corporate Practice of Medicine Doctrine?

## STATEMENT OF THE FACTS

The Appellants were owned by Jeanette Couf. Ms. Couf was not licensed in any healthcare area, including chiropractic during her ownership and operation of the Appellants. The Supreme Court determined that the Appellants were in violation of the Corporate Practice of Medicine Doctrine in *Isles Wellness v. Progressive N. Ins. Co.*<sup>1</sup>

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<sup>1</sup> 703 N.W.2d 513 (Minn. 2005).

## STATEMENT OF THE CASE

This lawsuit has an extensive procedural history through the Minnesota court system. This includes a trial court summary judgment, a partial reversal of that summary judgment on appeal by the Court of Appeals in *Isles Wellness, Inc. v. Progressive N. Ins. Co.*,<sup>2</sup> a reversal of that ruling by the Minnesota Supreme Court in *Isles Wellness v. Progressive N. Ins. Co.*,<sup>3</sup> and a ruling on remand by the Minnesota Court of Appeals. It is this ruling by the court of appeals which has lead to the case coming before this Court for a second time.

Hennepin County District Court Judge Robert Lynn's dismissal of this lawsuit via summary judgment began this lawsuit's odyssey through the Minnesota court system. In granting summary judgment, Judge Lynn ruled that "all [Appellants] are practicing healing in violation of the CPMD. As a result, any contract they have for practicing healing is illegal, against public policy, and void."<sup>4</sup> Judge Lynn also ruled that "[t]he assignments by [Appellants'] clients to collect no-fault benefits for services performed cannot be collected against [Respondents]."<sup>5</sup> Ultimately, the court concluded that: "[t]he remedy under the CPMD is the declaration that a contract is void and unenforceable. In this case,

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<sup>2</sup> 689 N.W.2d 561 (Minn. Ct. App. 2004).

<sup>3</sup> 703 N.W.2d 513 (Minn. 2005).

<sup>4</sup> Appendix to Petitioners' Petition for Review of Decision of Court of Appeals, dated March 27, 2006 at PA-1.

<sup>5</sup> *Id.*

this means [Respondents] would not have to pay outstanding bills. However, it does not mean they can recover money already paid back from [Appellants].”<sup>6</sup>

The Minnesota Court of Appeals ruled that the case of *Granger v. Adson*<sup>7</sup> did not create a prohibition of corporate ownership of a chiropractic, massage therapy or physical therapy clinic.<sup>8</sup> It therefore reversed Judge Lynn’s ruling in relation to the outstanding bills which had not been paid by the Respondents. The Respondents appealed this ruling.

The Minnesota Supreme Court reversed the court of appeals and reinstated this ruling by Judge Lynn in its *Isles Wellness* ruling. In its decision this Court ruled that the “corporate practice of medicine doctrine exists in Minnesota and [we] hold that the corporate employment of chiropractors is prohibited except as expressly permitted by statute.”<sup>9</sup> In arriving at that conclusion this Court evaluated the case of *Williams v. Mack*<sup>10</sup> in which a licensed optometrist was employed by a jewelry company that sold eyeglasses. In *Williams*, the Minnesota Supreme Court ruled that, by statute, a licensed optometrist was permitted to work for one engaged in the business of selling eyeglasses at retail.<sup>11</sup> In *Isles Wellness*, the Court stated that “[o]ur reasoning in *Williams* is built on the foundational principle that the corporate practice of optometry is prohibited unless authorized

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<sup>6</sup> *Id.*

<sup>7</sup> 190 Minn. 23, 250 N.W. 722 (1933).

<sup>8</sup> *Isles Wellness*, 689 N.W.2d at 566.

<sup>9</sup> 703 N.W.2d at 524.

<sup>10</sup> 202 Minn. 402, 278 N.W. 585 (Minn. 1938).

<sup>11</sup> *Id.* at 405, 278 N.W. at 587.

by statute.”<sup>12</sup> This Court ruled that the corporate practice optometry, by default, was prohibited under the CPMD, unless otherwise provided for by statute.<sup>13</sup> In addressing the application of CPMD to the disciplines involved in this lawsuit, chiropractic, physical therapy and massage therapy, this Court outlined three elements which must be fulfilled in order for the doctrine to apply to a specific medical discipline. These three elements include:

1. that the practitioner undergo training and obtain an education in that field;
2. that the practitioner be a member of a state licensed profession; and
3. that the practitioner enjoy independent professional judgment.<sup>14</sup>

This Court ultimately ruled that:

several Minnesota statutes support a holding that the [corporate practice of medicine] doctrine includes chiropractic. The practice of chiropractic is expressly included in the definition of healing. *Minn. Stat. § 146.01*. Statutes also require that chiropractors undergo extensive training, pass an examination, and maintain a license. *Minn. Stat. §§ 148.705, 148.710.72 (2004)*. In addition, the legislature has specifically recognized chiropractic as a “professional service” for purposes of the Minnesota Professional Firms Act. *Minn. Stat. § 319B.02, subd. 19*.<sup>15</sup>

This Court concluded that “chiropractic falls into the category of professions that is prohibited from corporate practice except pursuant to specific statutory or

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<sup>12</sup> 703 N.W.2d at 522.

<sup>13</sup> *Id.* at 521.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 523.

regulatory exceptions such as the Professional Firms Act.”<sup>16</sup> It also concluded that “with limited exceptions, the corporate practice of medicine doctrine exists in Minnesota...” holding that the corporate employment of chiropractors is prohibited except when expressly permitted by statute.<sup>17</sup>

This Court ruled that the CPMD did not apply to massage therapy because it is recognized as a complementary and alternative health care practice under Minn. Stat. § 146A.01 and that this form of healing must be rendered pursuant to a doctor’s referral.<sup>18</sup> It also ruled that the CPMD did not apply to physical therapy because physical therapists may not provide therapy to a patient without an order or referral from a physician, chiropractor or other medical professional.<sup>19</sup> This Court remanded case to the Court of Appeals to determine whether the Respondents owe on amounts claimed by the Appellants.<sup>20</sup>

Ultimately, as it pertains to the current appeal, this Court ruled that [f]inally, because the court of appeals did not address the issue and because we denied the clinics’ request for cross-review, we do not address the issue of whether the insurers are required to pay outstanding amounts billed for services provided by the clinics. Given our disposition of this case, we remand to the court of appeals to determine this issue.<sup>21</sup>

Following this Court’s ruling on this issue, in it’s Order Opinion, the court of appeals ruled that “by affirming the district court the supreme court has held

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<sup>16</sup> *Id.* at 524; citing *Liberty Mut. Ins. Co. v. Hyman*, 334 N.J. Super. 400, 759 A.2d 894, 900 (N.J. Super. Ct. Law Div. 2000) (prohibiting the corporate practice of chiropractic).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 522.

<sup>19</sup> *Id.* at 523.

<sup>20</sup> *Id.* at 524.

<sup>21</sup> *Id.*

that the outstanding claims for the corporate practice of chiropractic care are void as against public policy. Accordingly, appellants cannot recover outstanding claims for chiropractic care.<sup>22</sup>

The court of appeals also stated that it could not determine, as a matter of law, that the physical and massage therapy provided by the Appellants was sufficiently tainted by the fact that the referrals for those treatments came from the illegal chiropractic clinics.<sup>23</sup> This issue was remanded for a factual determination by the trial court of whether the physical and massage therapy referrals were tainted because all referrals came from the illegal chiropractic clinics. This issue is not a part of the current appeal.

The Appellants appealed, and this Court granted review on the sole issue of whether the Respondents are required to pay outstanding amounts billed for chiropractic services provide by the Appellants.

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<sup>22</sup> Appendix to Petitioners' Petition for Review of Decision of Court of Appeals, dated March 27, 2006 at PA-58 and 59.

<sup>23</sup> *Id.*

## LEGAL ARGUMENT

### **I. The Appellants Are Not Entitled To Reimbursement For Outstanding No-Fault Medical Expenses For Chiropractic Care Because The Clinics Were Operating Illegally.**

#### **A. Minnesota Law Dictates That The Contracts Made In Violation Of the Corporate Practice Medicine Doctrine Are Void And Unenforceable.**

Minnesota's longstanding public policy of prohibiting lay ownership and control of licensed medical and chiropractic clinics, as originally set forth in *Granger* was reaffirmed in *Isles Wellness*. In *Isles Wellness*, this Court has already determined that Appellants were formed and operated in violation of the Corporate Practice of Medicine Doctrine.<sup>24</sup>

The Corporate Practice of Medicine Doctrine, as recognized by Minnesota law is a common law doctrine that promotes the care and treatment of patients by limiting the corporate ownership of medical and chiropractic practices to individuals licensed in that particular field. Without a holding that the bills produced by the illegal clinics are void, unenforceable and against public policy, the public policy concerns behind the Corporate Practice of Medicine Doctrine are lost.

In *Granger v. Adson*, the supreme court held that the contract between Mr. Granger and the licensed pathologist he employed was illegal, against public policy and void and therefore, unenforceable. The court concluded that Mr. Granger was practicing medicine in violation of the Minnesota statute which

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<sup>24</sup> *Id.* at 524.

prohibited practicing medicine without a license.<sup>25</sup> In *Isles Wellness*, this court acknowledged and affirmed the establishment of the Corporate Practice of Medicine Doctrine in *Granger*. The Court stated that it is “improper and contrary to statute and public policy for a corporation or layman to practice medicine” indirectly by hiring a licensed doctor to practice for the benefit or profit of the layperson.<sup>26</sup> The public policy rationale supporting the Corporate Practice of Medicine Doctrine included the policy’s intention that the patient shall be the patient of the licensed physician and not of a corporation or layperson.<sup>27</sup>

**B. The Law In Other Jurisdictions.**

*i. New Jersey Law.*

A number of other states recognize the validity of CPMD.<sup>28</sup> In fact, New Jersey faced the same issue involved in this matter in *Liberty Mut. Ins. Co. v. Cimmie Hyman, et. al.*,<sup>29</sup>. In that matter, Liberty Mutual filed a suit seeking a declaration that it was not obligated to provide defendant Easton Chiropractic Associates, Inc. with personal injury protection (PIP) benefits for services rendered to its insureds. Liberty Mutual alleged that Easton, a general business corporation, was engaged in the improper practice of rendering chiropractic services without a license and violated the Professional Service Corporation Act.

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<sup>25</sup> *Id.* at 25-26, 250 N.W. at 723.

<sup>26</sup> *Id.* (citing 190 Minn. 23, 250 N.W. 722 (1933)).

<sup>27</sup> *Id.*

<sup>28</sup> See Sara Mars, *The Corporate Practice of Medicine: A Call for Action*, *Health Matrix: The Journal of Law-Medicine* (Winter 1997).

<sup>29</sup> 334 N.J. Super. 400; 759 A.2d 894 (2000).

*Id.* In *Liberty Mutual*, the court found that Easton's practice structure was contrary to longstanding jurisprudence in New Jersey, and other states, holding that professional services such as law and medicine may not be practiced in a corporate format, except pursuant to specific, legislative or regulatory exceptions.

The *Liberty Mutual* court stated:

Indeed, if Easton's corporate structure were deemed to be lawful, it would have succeeded in creating a health care practice structure that is capable of extraordinary abuse, yet free of regulatory oversight, regardless of the nature or gravity of the conduct in which a non-licensee owner has previously or may engage.<sup>30</sup>

The *Liberty Mutual* court recognized that, "Although there is no reported decision of a New Jersey court extending the rationale of [the corporate practice of law] to the professions of medicine and chiropractic, our courts have recognized that a similarly confidential relationship exists between a physician and his or her patient.<sup>31</sup> The New Jersey State Board of Chiropractic Examiners has also recognized that a similar relationship of trust and confidence exists between a chiropractor and his or her patient.<sup>32</sup>

The *Liberty Mutual* court awarded Liberty Mutual default judgment against Easton, Inc. declaring that Easton was not entitled to payment for PIP benefits since Easton was engaged in the illegal rendering of chiropractic services.<sup>33</sup>

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<sup>30</sup> *Id.* at 404, 759 A.2d at 897.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

The same logic should apply here. Couf is a non-licensed owner and is exactly the type of person that CPMD seeks to keep from owning clinics. She cultivates hundreds of thousands of dollars of no-fault benefits yet she completely avoids regulatory oversight. Couf and her clinics should not be entitled to benefit from Minnesota's generous No-Fault Atatute through their illegal activities.

ii. *New York Law.*

The New York state courts have also grappled with the issue of whether insurers can avoid payment for services rendered by illegal clinics. In *State Farm Mut. Automobile Ins. Co. v. Mallela*, the United States Court of Appeals considered New York's statutory no-fault scheme and the common law doctrine of the Corporate Practice of Medicine.<sup>34</sup> In its analysis, the Second Circuit noted that the question of state law presented was of central importance to the functioning of New York's no-fault automobile insurance system. The question presented was whether the insurance company may refuse to compensate medical corporations for healthcare services that are within the scope of the no-fault statute in every way "except" that the services were provided by healthcare professionals employed by unlawfully incorporated medical corporations. The Second Circuit recognized the State of New York's longstanding concern over the Corporate Practice of Medicine which could create ethical conflicts and undermine the quality of care afforded to patients. New York law forbids non-physicians from

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<sup>34</sup> 372 F.2d 500 (2<sup>nd</sup> Cir. 2004).

employing physicians or controlling their practices.<sup>35</sup> The United States Court of Appeals discussed both the State of New York's statutory no-fault system's purpose and its public policy. Both of these are strikingly similar to Minnesota's No-Fault Act as set forth in Minn. Stat. §65B.42, et seq. and the Corporate Practice of Medicine Doctrine as set forth in *Granger* and *Isles Wellness*.

In *Mallela*, State Farm argued that the medical corporations were barred from recovery for reimbursement of no-fault benefits because, among other reasons, the charges were illegal, against public policy and unenforceable under New York law. State Farm's position was based on the corporate form of the illegal clinic and did not include traditional fraud claims. State Farm's argument turned on whether the illegal corporate form fatally tainted the services performed by the licensed caregivers in such a way that the medical corporations were not entitled to reimbursement by the no-fault insurer. The Second Circuit Court of Appeals certified to the New York Court of Appeals the question of whether insurance carriers could withhold payment for medical services by illegally incorporated clinics to which patients assigned their benefits.<sup>36</sup>

The New York Court of Appeals answered the certified question in the affirmative, holding that no-fault insurers do not have to reimburse illegally incorporated healthcare practitioners.<sup>37</sup> In this *Mallela* case, the medical

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<sup>35</sup> *Id.* at 503.

<sup>36</sup> *Id.* at 510.

<sup>37</sup> *State Farm Mut. Auto. Ins. Co. v. Mallela*, 4 N.Y.3d 313, 827 N.E.2d 758, 794 N.Y.S.2d 700 (N.Y.2005).

corporations were in violation of New York state law which prohibits non-physicians from owning or controlling medical corporations. Thus, the New York Court of Appeals validated the no-fault insurer's position that its statutory and common law claims of the violation of the Corporate Practice of Medicine Doctrine prohibited the illegal medical corporations from reimbursement for no-fault medical expenses.<sup>38</sup>

The New York Court of Appeals specifically disagreed with the clinics who had argued that the care given to patients was within the scope of the caregivers' licenses and that the billings were, therefore, compensable under New York's No-Fault Act. The court rejected the argument, noting that the reimbursement went to the medical corporations which had been illegally formed and operated.<sup>39</sup> The holding by the New York Court of Appeals in *Mallela* is that no-fault insurers may look beyond the face of the corporate documents to identify failure to comply with state law.<sup>40</sup> At the same time, the court dismissed the clinics' arguments that no-fault insurers would turn this investigatory privilege into a vehicle for delay and obstruction.<sup>41</sup> The Court of Appeals noted that both New York's insurance law and the regulations for the state department of insurance provided for agency oversight of no-fault insurers. These laws made it clear that New York intended vigorous enforcement against any no-fault insurer who tried to use this privilege to

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<sup>38</sup> *Id.* at 320, 827 N.E.2d at 760, 794 N.Y.S.2d at 702.

<sup>39</sup> *Id.* at 321, 827 N.E.2d at 760, 794 N.Y.S.2d at 702.

<sup>40</sup> *Id.* at 321-322, 827 N.E.2d at 761, 794 N.Y.S.2d at 703.

<sup>41</sup> *Id.* at 322, 827 N.E.2d at 761, 794 N.Y.S.2d at 703.

withhold reimbursement to non-fraudulent healthcare providers.<sup>42</sup> Interestingly, the Appellants have elected to ignore this subsequent ruling by the New York Court of Appeals on this case.

Here, the facts, public policy and applicable Minnesota law are similar to the situation presented in *Mallela*. Appellants have presented many of the same arguments that were rejected in *Mallela*. These include, but are not limited to the intent of the lay owner, whether the services were provided by licensed professionals and that the billings were otherwise compensable under Minnesota's No-Fault Act. These claims failed in *Mallela* because the Court of Appeals recognized New York's public policy of prohibiting lay ownership or control of medical corporations. This principle of public policy is so important and so susceptible to attempts at circumvention, that the New York Court of Appeals denied reimbursement to the medical corporations as the proper remedy for the violation of the Corporate Practice of Medicine Doctrine.

**C. The Appellants' *Quantum Meruit* Argument Regarding The Treatment By Licensed Practitioners, Contravenes The Law In Both *Granger* And *Isles Wellness*.**

Throughout their brief, the Appellants argue that, despite Couf's illegal ownership of the chiropractic clinics, the clinics, via licensed practitioners, did provide services to patients and that those services are reimbursable. This argument for *quantum meruit* damages ignores the Minnesota Supreme Court's

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<sup>42</sup> *Id.*

rulings on this issue and seeks to carve out a convoluted exception to the CPMD that would render the doctrine completely ineffective.

The corporate practice doctrines in Minnesota do not permit the loophole that the Appellants are attempting to argue. As the Court is well aware, the CPMD in Minnesota originated in *Granger*. The *Granger* court applied the law from *In Re Disbarment of Otterness*,<sup>43</sup> a parallel case involving the practice of law. Referring to *Otterness*, the Minnesota Supreme Court stated:

[t]hat a corporation or laymen could not directly practice law by hiring a licensed attorney to practice law for others for the benefit or profit of such hirer. We are just as firmly convinced that it is improper and contrary to statute and public policy for a corporation or layman to practice medicine in the same way.<sup>44</sup>

The *Granger* court continued by stating that “what the law intends is that the patient shall be the patient of a licensed physician, not of a corporation or layman. The obligations and duties of the physician demand no less. There is no place for a middleman.”<sup>45</sup>

In 1960, in the case of *Benell v. City of Virginia*, the Minnesota Supreme Court again looked at CPMD in the context of a local hospital commission making administrative decisions about how to operate a hospital.<sup>46</sup> Although ultimately ruling that the facts in that case did not constitute CPMD, the *Benell* court

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<sup>43</sup> 232 NW. 318 (Minn. 1930).

<sup>44</sup> 190 Minn.at 26, 250 N.W. at 725.

<sup>45</sup> *Id.*

<sup>46</sup> 104 N.W.2d 633 (Minn. 1960).

reaffirmed the findings in *Granger* that it is improper and contrary to statute and public policy for a corporation or layman to practice medicine.<sup>47</sup>

This Court applied the same rationale in its *Isles Wellness* decision. It ruled that “. . . the corporate employment of chiropractors implicates the public policy consideration of commercial exploitation. Moreover, corporate practice of chiropractic raises the public policy concerns that corporate employers could interfere with independent medical judgment.”<sup>48</sup> The ruling concluded that “with limited exceptions, the corporate practice of medicine doctrine exists in Minnesota and hold that the corporate employment of chiropractors is prohibited except as expressly permitted by statute.”<sup>49</sup> With its decision, the Minnesota Supreme Court unequivocally upheld Minnesota’s CPMD, and ruled that there is an absolute prohibition of the corporate employment of chiropractors, unless that employment falls within specific statutory exceptions.

The rationale behind Minnesota’s, and other jurisdictions’ CPMD’s is that it is against public policy for the professional’s loyalty to be torn between the employer, who is interested in profits and the professional, who is interested effective treatment.<sup>50</sup> Moreover, it is against public policy for the autonomy and

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<sup>47</sup> *Id.* at 638.

<sup>48</sup> 703 N.W. 2d at 523.

<sup>49</sup> *Id.* at 524.

<sup>50</sup> Sara Mars, *The Corporate Practice of Medicine: A Call for Action*, 7 Health Matrix: Journal of Law-Medicine, 240, 249 (Winter 1997). Paul Welk, Note and Comment, *The Corporate Practice of Medicine Doctrine as a Tool for Regulating Physician-Owned Physical Therapy Services*, 23 J.L. & Com. 231 (2004) (the corporate practice of medicine doctrine was created at common law to protect

independent judgment of the professional to be placed in jeopardy by the corporation that is controlled by a layperson.<sup>51</sup>

In this appeal, the Appellants attempt to paint a picture of Jeanette Couf as an industrious businessperson who simply managed the operation of the clinics and did not interfere with practitioners in regards to patient treatments. While there is significant evidence that her conduct was far more intrusive and overbearing, her conduct in the clinics is irrelevant. The corporate ownership of chiropractic clinics is prohibited *per se* unless it falls under specific statutory exceptions; there is no allowance for a case-by-case evaluation of clinics in *Granger* or in *Isles Wellness*. Because there are no statutory exceptions which apply to the Appellants, Couf's ownership of the chiropractic clinics is a violation of Minnesota's Corporate Practice of Medicine Doctrine, *per se*.

Accepting Appellants' argument and allowing reimbursement in this case would render Minnesota's CPMD public policy ineffectual. It is not difficult to imagine a scenario where a lay interest could own and/or control licensed medical and chiropractic corporations until discovered by no-fault insurers, then in turn, shut down the entity, demand payment for outstanding amounts and resurface under a new name and location thereby repeating the process. There would be no

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patients from receiving substandard health care, particularly from practitioners hired by laypersons).

<sup>51</sup> *Id.* See also, J.F. Chase-Lubitz, *The Corporate Practice of Medicine Doctrine: An Anachronism in the Modern Health Care Industry*, 40 Vand.L.Rev. 445, 446-7 (1987) (the CPMD stems from the public policy concern that a non-professional might exercise control over a professional's judgment).

penalty to any individual or corporation seeking to circumvent the CPMD by owning or controlling medical and chiropractic clinics because these entities would always be able to recover reimbursement of outstanding billings.

Respondents respectfully submit that this is not the intended result of Minnesota's public policy of prohibiting lay ownership and control of medical and chiropractic practices.

**D. The CPMD's Application To The Practice Of Chiropractic Did Not Begin With This Court's Ruling In *Isles Wellness*.**

The Appellants also argue that the method by which they provided services must be evaluated based on the public policy that allegedly existed between 2000 and 2003. They then make the self-serving argument that the application of CPMD to chiropractic was "unclear" until the ruling in *Isles Wellness* in 2005.

The CPMD has existed since *Granger*. Chiropractic is inescapably defined as "healing" and as a result, the corporate employment of chiropractors is, and always has been a violation of the CPMD. This is clear from this Court's ruling in *Isles Wellness*, reinstating the trial court's determination on this issue. This argument by the Appellants is yet another attempt to reap as much benefit from Minnesota's No-Fault Act as possible despite their illegal operations.

**II. The Respondents Have A Private Cause Of Action And Standing To Pursue This Action.**

The Appellants argue that the Respondents do not have a private cause of action under either the Corporate Practice of Medicine Doctrine or Minnesota law.

The Appellants also assert that the Respondents must have standing to assert that

the Appellants' employment contracts are void in order to be successful. The Respondents have a private cause of action under both the CPMD and Minn. Stat. § 8.31, and the Appellants' contracts with its employees are irrelevant to this appeal.

**A. A Private Cause of Action Exists for the Respondents Under Minnesota's Private Attorney General Statute.**

The corporate practice of medicine is an illegal business practice in the state of Minnesota under *Granger* and recently affirmed by this Court's decision in *Isles Wellness*. Because the corporate practice of medicine is an illegal business practice, it is within the purview of the state's attorney general's duties to enforce. The Respondents have the ability to seek a private remedy under Minn. Stat. § 8.31, subd. 3(a), for any of the illegal business practices that the attorney general has authority to prosecute.

Minnesota Statute § 8.31 states that: “[t]he attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce or trade . . .”<sup>52</sup> The statute continues by providing a non-exclusive list of statutes to which this duty of the attorney general applies.<sup>53</sup> Although this portion of subd. 1 provides a list of nine statutes which are explicitly within the powers of the attorney general to investigate, the statute makes it clear that this is not an exclusive list, and that the

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<sup>52</sup> *Minn. Stat. § 8.31, subd. 1* (2005)

<sup>53</sup> *Id.*

attorney general's power extends to all unlawful practices in business, commerce or trade.<sup>54</sup> The statute continues by stating:

**Private remedies.** In addition to the remedies otherwise provided by the law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court.<sup>55</sup>

The Court in *Ly v. Nystrom*<sup>56</sup> ruled that the private Attorney General statute has been implemented to advance the legislative intent of uncovering and bringing to a halt unfair, deceptive, and fraudulent business practices.<sup>57</sup> As recently as 2001, in, *Group Health Plan, Inc. v. Phillip Morris Inc.*,<sup>58</sup> the Minnesota Supreme Court recognized an insurance company's right to bring a consumer fraud action under Minn. Stat. § 8.31, subd. 3a.<sup>59</sup>

The enforcement of corporate practice doctrines falls squarely within the purview of the state's attorney general. In *State v. Goodman*<sup>60</sup> the Minnesota Supreme Court heard an appeal where, through an action by the Minnesota

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<sup>54</sup> *Id.*

<sup>55</sup> *Minn. Stat. § 8.31, subd. 3a* (2005); see also, *Group Health Plan, Inc. v. Phillip Morris, Inc.*, 621 N.W.2d 2, 10 (Minn. 2001) (the goal of Minn. Stat. § 8.31, subd. 3a is to enable individuals injured by prohibited conduct to sue for damages and, in doing so, complement the limited enforcement resources of the attorney general); *Ly v. Nystrom*, 615 N.W.2d 302, 310 (Minn. 2000) (section 8.31, subd. 3a, provides that any person injured by violation of the law entrusted to the attorney general may recover damages with costs and attorney fees by bringing a civil action).

<sup>56</sup> 615 N.W.2d 302, 313 (Minn.2000).

<sup>57</sup> *Id.* at 313.

<sup>58</sup> 621 N.W.2d 2, 10-11 (Minn. 2001).

<sup>59</sup> *Id.* at 10-11.

<sup>60</sup> 206 Minn. 203, 288 N.W. 157 (1939).

Attorney General, the defendant was enjoined from practicing or engaging in the practice of optometry. This practice was forbidden by statute at that time.<sup>61</sup>

Moreover, the Respondents are in a unique position to identify illegal clinics as a result of the requirements of the no-fault statute and can act as a first line of defense for consumers. By identifying and prosecuting illegal clinics and unlicensed individuals, the Respondents are protecting the citizens of Minnesota, not only from illegal clinics and practitioners, but by lowering insurance premiums in this state. It is in the best interest of the State of Minnesota and its citizens to prevent illegal clinics from operating and to prevent unlicensed individuals from practicing chiropractic.

As noted above, the Minnesota Supreme Court has reaffirmed that the corporate practice of chiropractic is an illegal business practice in this state. As such, its regulation falls within the charge of the state's attorney general under Minn. Stat. § 8.31. The fact that violations of the CPMD fall within the purview of the state's attorney general is confirmed by the Minnesota Supreme Court's ruling in *State v. Goodman*.<sup>62</sup> Consequently, under Minn. Stat. § 8.31, subd. 3a, because the Respondents were damaged by the actions of the Appellants, they have a private cause of action, acting in the place of the attorney general and seeking a private remedy.

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<sup>61</sup> *Id.* at 205, 288 N.W. at 158. *Citing 3 Mason Minn. St. 1938 Supp. § 5789.*

<sup>62</sup> 206 Minn. 203, 288 N.W. 157 (1939)

**B. A Private Cause of Action Exists for the Respondents Under the Corporate Practice of Medicine Doctrine.**

The Appellant's argue that the Respondents have no private cause of action under the CPMD, however, this conclusion ignores the ruling at the heart of the CPMD, created in *Granger*, and upheld by this Court in *Isles Wellness*.

At the end of the *Granger* ruling, the court stated that contracts made in violation of the CPMD were illegal, against public policy and void.<sup>63</sup> The *Granger* case created a private cause of action at common law by ruling as it did in regards to contracts made in violation of the CPMD. This ruling on the validity of contracts made in violation of the CPMD was reaffirmed by the Minnesota Supreme Court in *Isles Wellness*.

In addition, it has long been accepted in Minnesota law that there is a remedy in equity for all wrongs. As noted by the Minnesota Supreme Court: "The oracle of the common law 'have ever claimed for it a capacity to afford a remedy for every wrong'".<sup>64</sup> Based on this string of rulings, because the CPMD is a common law doctrine, a remedy must be provided for those injured by its violation. By paying no-fault benefits to the Appellants, the Respondents have been harmed by the Appellants' violation of the common law doctrine of CPMD,

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<sup>63</sup> 190 Minn. at 27, 250 N.W. at 724.

<sup>64</sup> *Rogers v. Clark Iron Co.*, 104 Minn. 198, 212, 116 N.W. 739, 744 (1908). See also, *Sullivan v. Mpls. & Rainy River Railway Co.*, 121 Minn. 488, 495, 142 N.W.3, 14 (1913) (the common law's guiding star has always been the rule of right and wrong, and in this country its principles demonstrate that there is in fact, as well in theory, a remedy for all wrongs; *Quirk v. Everett*, 106 Minn. 474, 479, 119 N.W. 63 (1909) (there is no wrong without a remedy).

and are therefore entitled to a remedy in equity. That remedy is at the heart of this appeal; that the Respondents should not have to pay the outstanding bills from these illegal clinics.

Based on the rulings in *Granger* and *Isles Wellness*, the insurers do have a private cause of action under the CPMD and any contracts, including the assignments of benefits in this case, are null and void.

**C. The Respondents' Standing To Void The Appellant's Employment Contracts Is Irrelevant.**

The Appellants have argued that the Respondents lack standing to challenge the Appellants' employment contracts. They continue by stating that the Respondents have no legal interest in the Appellants' employment agreements and therefore, they lack standing to claim that the employment agreements are void.

This assertion has no relevance to this litigation. Again, as noted in *Granger*, and subsequently upheld in *Isles Wellness*, all contracts made in violation of the CPMD are void and illegal. This includes the Respondents' duty to pay for services rendered by the Appellant's illegal clinics. There is no need for the Respondents to contest the employment contracts of the Appellants because any duty to pay for services on the part of the Respondents is void.

Furthermore, if it were necessary to declare the employment contracts of the Appellants void, it would not be necessary for the Respondents to challenge them; the contracts are void as a matter of law under *Granger* and *Isles Wellness*. The corporate practice of medicine is illegal and all contracts made in

contravention of the CPMD are void and illegal; this would include employment contracts.

**D. In Order To Adequately Protect Minnesota's Citizens, Insurers Must Be Able To Defend Themselves Against Illegal Clinics.**

The Respondents request that this court uphold the summary judgment ruling of the trial court and provide the no-fault insurers with the remedy against illegal clinics pursuant to CPMD and/or Minnesota Statute § 8.31.

The State of Minnesota has given insurers the duty of being the first line of defense to illegal, fraudulent and unfair claims for insurance.<sup>65</sup> These duties include determining whether a clinic is illegally owned or formed. The state's Unfair Claims Practice Act requires that insurance claims be paid within 30 business days.<sup>66</sup> By the time even a diligent insurer can investigate a clinic, large amounts may have been paid to that clinic. The Appellants are proposing that, in addition to no-fault benefits already paid, the Respondents should be forced to pay outstanding benefits even after an investigation has revealed that the clinics are operating illegally. Permitting this result is injurious to the public interests because these clinics are operating illegally. Minnesota has a longstanding precedent that contracts that "tend to injure public health or morals" or "contravene some established interest of society" are contrary to public policy and are therefore void.<sup>67</sup> In addition, the doctrine of *in pari delicto* holds that "anyone

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<sup>65</sup> Minn. Stat. § 60A.951-.955 (2006).

<sup>66</sup> Minn. Stat. § 72A.201 (2006).

<sup>67</sup> *In re Peterson's Estate*, 230 Minn. 478, 483, 44 N.W.2d 59, 63 (1950).

who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.”<sup>68</sup> The Appellants violated the law and public trust, and should not be allowed to reap the rewards for doing so. As a result, Respondents should not have to further line the pockets of the Appellants with ill-gotten no-fault benefits.

Appellants’ argument that insurers will reap a windfall if the Court allows them to avoid payment on outstanding claims is without merit. The No-Fault Act and the policies at issue only require reimbursement if the treatment received is reasonable and necessary.<sup>69</sup> The expenses for which Appellants seek reimbursement are inherently unreasonable because there were illegal and unnecessary. The treatment given was provided on a one-size-fits-all basis by clinics that were operating illegally. Therefore, the amount that Appellants seek reimbursement for should be denied.

The Respondents do not need a private cause of action to avoid payment of outstanding bills of the Appellants. All contracts in violation of the CPMD are void as a matter of law, not requiring any action by the Respondents. In addition, even if a private cause of action were required for the Respondents, one exists under both Minn. Stat. § 8.31 and under the CPMD. The trial court’s original summary judgment in this regard should be affirmed.

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<sup>68</sup> *State v. AAMCO Auto Trans., Inc.* 293 Minn. 342, 199 N.W.2d 444, 448 (1972).

<sup>69</sup> *See Minn. Stat. 64B.44, subd. 2 (2006).*

**III. The Prohibition Of Corporate Ownership Of Clinics That Practice “Healing” Has Existed Since The *Granger* Ruling In 1933; It Was Not Created By This Court’s Decision In *Isles Wellness*.**

The Appellants argue that the method by which they provided services must be evaluated based on the public policy that allegedly existed between 2000 and 2003. They then make the self-serving argument that the application of CPMD to chiropractic was “unclear” until the ruling in *Isles Wellness* in 2005.

The CPMD has existed since *Granger*. Chiropractic is inescapably defined as “healing” and as a result, the corporate employment of chiropractors is, and always has been a violation of the CPMD. This is clear from this Court’s ruling in *Isles Wellness*, reinstating the trial court’s determination on this issue.

**CONCLUSION**

The Appellants are seeking reimbursement for treatment despite their violations of the CPMD. This result would effectively destroy the corporate practice of medicine doctrine in Minnesota because people like Jeanette Couf, who are looking to exploit Minnesota’s generous no-fault provisions, would continually reincorporate their clinics each time they are shut down for violating the CPMD, knowing they would be paid for all services rendered. This result would have disastrous effects that would extend, not only to chiropractic clinics, but to medical clinics as well. The Respondents are in an excellent position to identify and properly prosecute illegal clinics, while at the same time, they are tightly regulated by the Minnesota Department of Commerce so that this power is not

abused. The Respondents should be permitted, either under Minn. Stat. § 8.31 or the principles of CPMD, to pursue a remedy for the Appellants' illegal acts.

Consequently, the Respondents respectfully request that the Court affirm the Order Opinion of the Minnesota Court of Appeals and the district court by ruling that the Appellants are not entitled to receive any payment from the Respondents for outstanding chiropractic care claims.

Respectfully Submitted,

Dated: *July 16, 2006*

STEMPEL & DOTY, PLC

BY: *Richard S. Stempel*

Richard S. Stempel, #161834

Jon R. Schindel, #332835

Attorneys for Appellants

41 Twelfth Avenue North

Hopkins, MN 55343

(952) 935-0908

STATE OF MINNESOTA  
IN SUPREME COURT

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**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,**

v.

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

**Respondents (A04-485, A04-486, A04-498),**

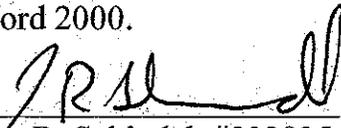
**Allstate Indemnity Co., a Delaware Corporation doing business in the State of Minnesota,**

**Respondents (A04-487, A04-488).**

**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subd. 1. The length of the brief is 525 lines and 5,394 words. This brief was prepared using Microsoft Office Word 2000.

7-17-06  
Date

  
Jon R. Schindel, #332835  
Atty. Reg. No. 161834  
STEMPEL & DOTY, PLC  
41 Twelfth Avenue North  
Hopkins, MN 55343  
(952) 935-0908

*Attorney For Respondents*