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State of Minnesota
In Supreme Court

ANDREA A. SCHATZ,
Relator-Appellant,

vs.

INTERFAITH CARE CENTER AND
NEW HAMPSHIRE INSURANCE COMPANY/CHARTIS,
Respondents.

APPELLANT'S BRIEF, ADDENDUM AND APPENDIX

FALSANI, BALMER, PETERSON,
QUINN & BEYER
James B. Peterson (#185012)
1200 Alworth Building
306 West Superior Street
Duluth, Minnesota 55802-1800
Telephone: (218) 723-1990

*Attorney for Relator-Appellant
Andrea A. Schatz*

ERSTAD & RIEMER, P.A.
Nicole B. Surges (#213391)
8009 34th Avenue South
Suite 200
Minneapolis, Minnesota 55425
Telephone: (952) 837-3252

*Attorneys for Respondents
Interfaith Care Center and
New Hampshire Insurance
Company/Chartis*

LORI SWANSON
Minnesota Attorney General
1800 Bremer Tower
445 Minnesota Street
St. Paul, Minnesota 55101
Telephone: (651) 296-3353

Attorney for State of Minnesota

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).

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STATEMENT OF THE LEGAL ISSUES

(1) Does the Workers' Compensation Court of Appeals' interpretation of Minn. Stat. §176.136, Subd. 1 (b)(d) erroneously shift liability for the usual and customary charges of an out of state medical provider from the Employer/Insurer to the Employee?

The trial court held in the affirmative.

The Workers' Compensation Court of Appeals held that, although the statute did shift liability for medical costs from the employer and insurer to the employee, the statute's plain meaning was not ambiguous and that the Workers' Compensation Court of Appeals did not have the authority to decide otherwise.

Cases: Erickson v. Sunset Memorial Park Assoc., 259 Minn. 532, 108 N.W.2d 434 (1961)

Statutes: Minn. Stat. §176.136, subd. 1b(d) and §176.135, subd. 1(a)

(2) Does Minn. Stat. §176.136, Subd. 1 (b)(d), as interpreted by the Workers' Compensation Court of Appeals, extend the Minnesota Workers' Compensation Act to out-of-state medical providers and improperly require Minnesota compensation judges to apply and interpret the laws of other states?

The trial court held it did not have jurisdiction over the out-of-state providers.

In a footnote, the Workers' Compensation Court of Appeals noted that there was a "very real question" as to whether Minnesota workers' compensation judges could interpret and apply another state's laws.

Cases: Hale v. Viking Trucking Company, 654 N.W.2d 119, 123 (Minn. 2002).

Statutes: Minn. Stat. §176.136, subd. 1b(d), and §175A.01.

(3) Does the Workers' Compensation Court of Appeals' interpretation of §176.136, Subd. 1 (b)(d) conflict with §176.135 and fundamental principles of the Minnesota Workers' Compensation Act?

The trial court held in the affirmative.

The Workers' Compensation Court of Appeals held that the statute at issue was consistent with the purpose and intent of the Workers' Compensation Act.

Statutes: Minn. Stat. §176.136, subd. 1b(d) and §176.135, subd. 1.

(4) Does the Workers' Compensation Court of Appeals' interpretation of Minn. Stat. §176.136, Subd. 1 (b)(d) violate the Employee's right to equal protection and due process as guaranteed in the Minnesota Constitution?

The trial court and the Workers' Compensation Court of Appeals did not address constitutional issues. The issues were raised in arguments before the trial court.

Cases: Mitchell v. Steffen, 504 N.W.2d 198, 200 (Minn. 1993)

Minnesota Constitution, Article 1, Sec. 2

Minnesota Constitution, Article 1, Sec. 7

STATEMENT OF THE CASE

This is a workers' compensation case involving out-of-state medical expenses. Employee-Relator Andrea Schatz injured her shoulder while working for Interfaith Care Center in Minnesota. Respondent New Hampshire Insurance Company accepted liability. Ms. Schatz later moved to Wyoming and continued her medical treatment for the injury. Respondent paid part of the disputed expenses pursuant to Minn. Stat. §176.136, Subd. 1b(d) (2008), which limits payment to out-of-state medical providers to the amount payable under the fee schedule of that state. Two Wyoming medical providers then began collection efforts against Ms. Schatz for \$7,198.36, which is the balance between the providers' usual and customary charges and the amount paid by Respondent pursuant to the Minnesota statute.

The parties submitted stipulated facts and arguments to a compensation judge at a hearing on November 10, 2010. The compensation judge awarded the disputed benefits to the Employee. Respondent appealed to the Workers' Compensation Court of Appeals (WCCA). In a decision dated June 16, 2011, the Workers' Compensation Court of Appeals reversed. The court's decision questioned the rationale behind the statute at issue, but held that it was not ambiguous, did not conflict with §176.135, and that it did not have the authority to invalidate the statute. The dissenting judge would have affirmed the decision of the compensation judge by interpreting §176.136, Subd. 1b(d) to apply only when

an out of state medical provider intervened in the workers' compensation claim, so that the statute would be consistent with Minn. Stat. §176.135.

This is the first appellate case to interpret § 176.136, subd. 1b(d).

STATEMENT OF FACTS

The parties stipulated to the underlying facts, as follows: The Employee, Andrea Schatz, suffered an injury to her left shoulder on January 26, 2009, while working for the Interfaith Care Center in Minnesota. The Employer and Insurer accepted liability. Sometime after the injury, the employee moved to Wyoming, and continued to receive medical care for the left shoulder injury there. This care included surgeries to her left shoulder on June 16, 2009 and September 3, 2010. The surgeries were performed by a physician from Thunder Basin Orthopedics in Gillette, Wyoming; anesthesia for the surgeries was provided by Wyoming Regional Anesthesia.

Both Wyoming medical providers submitted a bill for services that was within the usual and customary range of charges for the Wyoming area. The Minnesota workers' compensation insurer paid those bills according to the Wyoming workers' compensation fee schedule, consistent with Minn. Stat. §176.136, Subd. 1(b)(d). After that payment was made, Thunder Basin Orthopedics billed the employee for the unpaid balance of \$5,796.92 and Wyoming Regional Anesthesia billed the employee for an unpaid balance of \$1,401.44. Neither medical provider has intervened in this action; both have notified the employee that they believe it is her personal responsibility to pay the remaining balance of the bill. Findings and Order of the Compensation Judge, pp. 2-3, Addendum.

ARGUMENT

I. STANDARD OF REVIEW.

The Minnesota Supreme Court may review a decision of the Workers' Compensation Court of Appeals on certiorari on one of the following grounds:

1. The order does not conform with the Minnesota Workers' Compensation Act; or

2. The Workers' Compensation Court of Appeals committed an error of law.

Minn. Stat. §176.471 (2008). This Court reviews questions of law decided by the Workers' Compensation Court of Appeals which exercises independent judgment.

Owens ex rel. Owens v. Water Gremlin Company, 605 N.W.2d 733 (Minn. 2000).

In this appeal, the Supreme Court has original jurisdiction and may reverse, affirm, or modify the decision of the Workers' Compensation Court of Appeals, or remand the matter to the Workers' Compensation Court of Appeals for further proceedings. Minn. Stat. §176.481 (2008).

II. THE WORKERS' COMPENSATION COURT OF APPEALS' INTERPRETATION OF MINN. STAT. §176.136, SUBD. 1b(d) ERRONEOUSLY SHIFTS LIABILITY FOR USUAL AND CUSTOMARY CHARGES FOR MEDICAL EXPENSES FROM THE EMPLOYER AND INSURER TO THE EMPLOYEE.

The statute at issue is Minn. Stat. §176.136, subd. 1b(d)(2008), which states,

An employer's liability for treatment, articles, and supplies provided under this chapter by a health care provider located outside of Minnesota is limited to the payment that the health care provider would receive if the treatment, article, or supply were paid under the workers' compensation law of the jurisdiction in which the treatment was provided.

Minn. Stat. §176.136, Subd. 1b(d)(2008). This section was added by the Legislature in 2008, and was effective as of May 1, 2008. The previous version of the statute did not contain a limitation of liability with respect to out of state medical treatment expenses. This appeal also involves Minn. Stat. §176.135, which provides,

The employer shall furnish any medical....surgical and hospital treatment, including nursing, medicines, medical....and surgical supplies, crutches, and apparatus....as may reasonably be required at the time of the injury and any time thereafter to cure and relieve the effects of the injury.

Minn. Stat. §176.135, Subd. 1(a)(2008).

The compensation judge and the Workers' Compensation Court of Appeals both recognized that §176.136, subd. 1b(d) does shift the cost of reasonable and necessary medical treatment from the employer and insurer to an injured employee. In this case, that shift amounts to more than \$7,000, for which the employee is personally liable to the Wyoming medical providers. The shift is contrary to the letter and spirit of the Act, so that this interpretation of the statute by the Workers' Compensation Court of Appeals should be reversed.

A Minnesota medical provider is subject to the jurisdiction of the Minnesota Workers' Compensation Act, its accompanying administrative rules, and the decisions of the compensation judges and this Court. Among those rules are the Minnesota treatment parameters and fee schedule. Any medical treatment deemed to be unreasonable or unnecessary, or any charge deemed to be excessive, may not be collected by the medical provider from the employee or any other entity. Minn. Stat. §176.136, Subd. 2 (2006). The insurer is liable for the full amount payable under Minnesota law; the employee may not be billed for any excess charges.

In this case, however, since neither Thunder Basin Orthopedics nor Wyoming Regional Anesthesia are bound by Minnesota law, they are free to bring legal action against the employee for any amount of their usual and customary charges not paid by the Minnesota workers' compensation insurer. As the compensation judge noted, this unfairly and improperly shifts the burden of paying these medical expenses to the employee, rather than the insurer. The Minnesota Workers' Compensation Act does not provide a defense for the employee in a collections action brought against her by these medical providers. She cannot argue that the charges are excessive simply because the Minnesota insurer and Minnesota statute deemed them so. Such a result cannot have been contemplated by the legislature in enacting the statute at issue. The Workers' Compensation Court of Appeals noted that the legislative history is not persuasive that such a result was contemplated or intended when the statute was amended. Generally,

statutory terms are subject to implied exceptions founded upon public policy and maxims of natural justice so as to avoid absurd and unjust consequences. Erickson v. Sunset Memorial Park Assoc., 259 Minn. 532, 108 N.W.2d 434 (1961).

This court should reverse the Workers' Compensation Court of Appeals. To be consistent with Minn. Stat. §176.135 and the principle that the cost of medical treatment for a Minnesota work injury should be borne by the employer and insurer, Minn. Stat. §176.136, Subd. 1b(d) should be interpreted to apply only to those out-of-state medical providers which are subject to Minnesota workers' compensation jurisdiction. In other words, those medical providers who choose to intervene in a pending workers' compensation matter, or those which may be subject to Minnesota jurisdiction for other reasons (such as having a substantial business presence in the state as well as out of the state). This interpretation, as outlined by the dissent in the Workers' Compensation Court of Appeals' opinion, leaves intact the statute without improperly shifting the burden of medical expenses to an injured worker.

The employer and insurer argue that the employee's written agreement to pay the excess charge somehow alters the general principles of the Act. But an employee's agreement to be bound by another state's laws is unenforceable. Ozmun v. Ohio Cart/Omni Cart Services, 66 W.C.D. 1 (W.C.C.A. 2005). Any agreement by an employee to accept less compensation than prescribed by the Minnesota Workers' Compensation Act is void. Minn. Stat. §176.021, Subd. 4;

Ozmun. The form signed by Ms. Schatz in this case is irrelevant to the issues before the court.

III. THE WORKER' COMPENSATION COURT OF APPEALS' INTERPRETATION OF MINN. STAT. §176.136, SUBD. 1B(D) IMPROPERLY EXTENDS THE MINNESOTA WORKERS' COMPENSATION ACT TO OUT OF STATE MEDICAL PROVIDERS AND IMPROPERLY REQUIRES MINNESOTA COMPENSATION JUDGES TO APPLY AND INTERPET THE LAWS OF OTHER STATES.

Since the Act was first enacted, the rule has always been that the employer shall furnish any medical treatment as may be reasonably required by the employee to cure and relieve the effects of the injury. Minn. Stat. §176.135, Subd.

1. There is no dispute here that the treatment rendered for the employee in Wyoming, including the shoulder surgeries, was reasonable and necessary to cure and relieve the effects of the work injury. Minn. Stat. §176.135 provides no mechanism for payments by the employee for medical care; if the care is reasonable and necessary, it is paid by the insurer. If it is not reasonable and necessary, or excessive, then no one is liable for the payments. Minn. Stat. §176.136, Subd. 2.

Neither a Minnesota compensation judge nor the Workers' Compensation Court of Appeals has jurisdiction in any case that does arise under the Minnesota Workers' Compensation Act. Minn. Stat. §175A.01, subd. 5 (2008). This Court has previously held that, as a result, a claim outside that jurisdiction must be dismissed for lack of subject matter jurisdiction. Hale v. Viking Trucking Company, 654 N.W.2d 119, 123 (Minn. 2002). Jurisdiction of this court or the

lower workers' compensation courts simply does not extend to interpreting or applying legislation outside of the Minnesota Workers' Compensation Act. Sundby v. City of St. Peter, 693 N.W.2d 206 (Minn. 2005). Neither the compensation judge nor the Workers' Compensation Court of Appeals has jurisdiction to order benefits to be paid pursuant to another state's laws. See, e.g., Rundberg v. Hirschbach Motor Lines, 51 W.C.D. 193, 206 (W.C.C.A. 1994); Boothe v. TFE, 55 W.C.D. 353 (W.C.C.A. 1996).

The Workers' Compensation Court of Appeals' interpretation of Minn. Stat. §176.136, Subd. 1b(d) directly violates the principles of §175A.01 and the cases cited. By requiring a compensation judge to interpret and apply the laws of, in this case, Wyoming, the interpretation must fail. Moreover, since the Wyoming medical providers are not subject to jurisdiction of Minnesota courts, that interpretation must be deemed an improper overreaction of the authority of the Minnesota workers' compensation system.

The two medical providers in Wyoming are not subject to Minnesota jurisdiction. The compensation judge properly noted that she did not have jurisdiction over those medical providers. They did not intervene and become a party to this action. It is undisputed that, as a result, these medical providers are not required to simply accept the minimal payment made by the insurer in this case, but have the legal right to pursue the Employee personally for the excess medical charges.

This issue has arisen previously, before §176.136, subd. 1b(d) was enacted. In Finke v. Midwest Coast Transportation, 59 W.C.D. 111 (W.C.C.A. 1999), the Workers' Compensation Court of Appeals held that a South Dakota medical provider was entitled to receive payment for the usual and customary charge for similar treatment in the community where the treatment is rendered. In that case, the employer and insurer argued that it was entitled to limit payments to that provider to the amount set forth in the South Dakota medical fee schedule. The compensation judge agreed; the Workers' Compensation Court of Appeals reversed, stating that "the employee's right to reimbursement of medical expenses in this case is governed by Minnesota and not South Dakota law." The Court implicitly noted the difficulty inherent in requiring a Minnesota compensation judge to interpret another state's law.

In Finke, the Court concluded that, in such a situation, the employee has the burden of presenting "some evidence" that the healthcare provider's charges met the "usual and customary charges standard, which burden can be met by a statement from the provider to that effect." Finke, supra, citing Crowson v. Valley Park, Inc., 56 W.C.D. 539 (W.C.C.A. 1997). The burden then shifts to the employer and insurer to prove that the charges were excessive. In this case, the employee submitted a statement from the Thunder Basin Orthopedics that the charges were usual and customary within that community. No evidence was presented to rebut that evidence.

The legislature amended the statute following the Finke decision, adding Subd. 1(b)(d). The statute now mirrors the argument made by the employer and insurer in Finke.

The problem with the statutory amendment is that it still does not address the root problem in Finke. First, the Wyoming medical providers, like the South Dakota providers in that case, are simply not bound by a Minnesota workers' compensation judge's interpretation of Minnesota workers' compensation law. Second, the statute requires the compensation judge to interpret and apply the law and administrative rules of another jurisdiction. That violates §175A.01, subd. 5 and Workers' Compensation Court of Appeals precedent. See, e.g., Hughes v. Edwards Manufacturing Company, 61 W.C.D. 481 (W.C.C.A. 2001).

In its decision, the Workers' Compensation Court of Appeals expressly noted these difficulties with both the statute as written and with its own interpretation of that statute, it properly noted that it did not have the authority to either overrule or invalidate the statute. This Court does have that authority, or at least the authority to interpret the statute so as to avoid these difficulties. A better reading of the statute would have it apply only to medical providers subject to Minnesota jurisdiction, either by voluntarily filing a motion to intervene or by virtue of their business in this state. Requiring a compensation judge to interpret the laws of another state and apply them to a medical provider over which he or she has no jurisdiction is folly.

IV. THE WORKERS' COMPENSATION COURT OF APPEALS' INTERPRETATION OF §176.136, SUBD. 1b(d) CONFLICTS WITH §176.135 AND FUNDAMENTAL PRINCIPLES OF THE MINNESOTA WORKERS' COMPENSATION ACT.

§176.136, Subd. 1b(d) is ambiguous in that it conflicts with the more general provisions of §176.135, conflicts with the general principle of long-standing Minnesota law that the employer and insurer are liable for medical expenses, rather than the employee, and conflicts with the case law established in Finke, Crowson, and other cases regarding the extent of Minnesota jurisdiction over out-of-state medical providers. The various cites documented by the Respondent regarding legislative intent do not assist interpretation of the statute. Those statements seem to merely recite the words of the statute. As noted, no Minnesota legislator stood up and said, "The idea here is to stick the injured worker with thousands of dollars in bills if she treats for her injuries in another state." There is no contemplation or realization by the legislators that, whatever their wishes, they cannot impose their will on a non-Minnesota medical provider over which the state has no jurisdiction. Finally, there is certainly no legislative history that would evince an intent to abrogate §176.135 by the enactment of §176.136, Subd. 1b(d), as argued by the employer and insurer in this case.

V. MINN. STAT. §176.136, SUBD. 1b(d), AS INTERPRETED BY THE WORKERS' COMPENSATION COURT OF APPEALS, VIOLATES THE EQUAL PROTECTION RIGHTS OF INJURED WORKERS.

The Minnesota Constitution provides, “No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof.” Minnesota Constitution, Article 1, Sec. 2 (Restructured Constitution-1974). This provision requires that the state treat all similarly situated persons alike. Kolton v. County of Anoka, 645 N.W.2d 403, 411 (Minn. 2002). Once it is established that a statute does not treat similarly situated persons equally, the court must determine whether to apply strict scrutiny or rational basis to the review. Erlandson v. Kiffmeyer, 659 N.W.2d 724, 733 (Minn. 2003). The court will apply strict scrutiny to a statutory classification that involves a suspect classification or a fundamental right. Bituminous Casualty Corp. v. Swanson, 341 N.W.2d 285, 289 (Minn. 1983). If strict scrutiny applies, the legislatively-created classification must be “narrowly tailored and reasonably necessary to further a compelling government interest.” Hennepin County v. Perry, 561 N.W.2d 889, 897 (Minn. 1997).

Here, Minn. Stat. §176.136, subd.1b(d) treats workers injured in Minnesota differently depending on where they seek medical treatment. As noted above, if Andrea Schatz’ medical treatment was solely by medical providers located within the State of Minnesota, they would be subject to the limitations of the Workers’ Compensation Act and the jurisdiction of the Minnesota workers’ compensation courts. Any medical treatment or charge deemed unreasonable or excessive would not only not be payable to the medical provider, but it would not be chargeable to the employee pursuant to Minn. Stat. §176.136, Subd. 2. However, if the

Workers' Compensation Court of Appeals' interpretation of Minn. Stat. §176.136, Subd. 1b(d) is upheld, then injured workers such as Andrea Schatz will be significantly disadvantaged. Since her Wyoming medical providers are not subject to Minnesota law, and not subject to Minnesota jurisdiction, they are free to make her personally liable for whatever medical expenses they deem reasonable. In this case, that means she will be personally liable for more than \$7,000 of medical care. Injured workers receiving their care in Minnesota only would not face any personal liability for medical expenses. Either the expenses would be paid by the employer and insurer, or deemed not payable by anyone. Obviously, this satisfies the first prong of the equal protection analysis.

Strict scrutiny applies. The right to travel between states is a fundamental right under the United States Constitution. Mitchell v. Steffen, 504 N.W.2d 198, 200 (Minn. 1993). This fundamental right to travel expressly includes the right of migration from state to state. Mitchell, 504 N.W.2d at 201. Here, Andrea Schatz' received this severe diminution of her workers' compensation rights only because she moved from Minnesota to Wyoming. By exercising a fundamental right, she became subject to the discrimination set forth in Minn. Stat. §176.136, Subd. 1b(d), as interpreted by the Workers' Compensation Court of Appeals.

There is no compelling government interest to justify such discrimination. Presumably, the employer and insurer will argue that that interest is in limiting the liability for medical costs for employers and insurers. While that may be an interest, it is not a compelling interest under Minnesota equal protection law. As

we have seen, the strict interpretation of the statute conflicts with the fundamental principles of the Minnesota Workers' Compensation Act, longstanding case law regarding primary liability for medical expenses, and the plain language of Minn. Stat. §176.135. As interpreted by the Workers' Compensation Court of Appeals, the statute violates the equal protection rights of Relator Andrea Schatz.

VI. MINN. STAT. §176.136, SUBD. 1b(d), AS INTERPRETED BY THE WORKERS' COMPENSATION COURT OF APPEALS, VIOLATES THE DUE PROCESS RIGHTS OF RELATOR.

The Minnesota Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Minnesota Constitution, Article 1, Sec. 7 (Restructured Constitution-1974). Analyzing the due process rights of Relator is similar to analyzing her equal protection rights. As an injured worker subject to the provisions of the Minnesota Workers' Compensation Act, Andrea Schatz was entitled to have any reasonable, necessary, and causally related medical expenses paid by the employer and insurer. Minn. Stat. §176.135, Subd. 1. In the event of a dispute over the reasonableness, necessity, or causal relationship of a medical expense, she could avail herself of the jurisdiction of Minnesota workers' compensation courts. A medical provider subject to Minnesota jurisdiction would be subject to determinations of the Minnesota compensation courts as well.

Instead, by exercising her fundamental right of travel, Relator has lost her rights under the Workers' Compensation Act. Since the Wyoming medical

providers are not subject to Minnesota jurisdiction, Minnesota law, or the decisions of Minnesota workers' compensation courts, the employee is exposed to personal liability for medical expenses, as occurred in this case. She has no recourse if the statute is interpreted as it was by the Workers' Compensation Court of Appeals. She cannot invoke Minnesota workers' compensation law in a collection action against her in the State of Wyoming. Essentially, she has no defense to a lawsuit by her medical providers in Wyoming, even if those charges should either be paid by the Minnesota employer and insurer or deemed unpayable and uncollectible by a Minnesota court.

By depriving her of the property interest in having medical expenses paid under the Minnesota Workers' Compensation Act, Minn. Stat. §176.136, Subd. 1b(d) deprives her of due process, and therefore violates Article 1, Sec. 7 of the Constitution.

CONCLUSION

As an injured worker subject to the Minnesota Workers' Compensation Act, Relator Andrea Schatz is entitled to full payment of any reasonable, necessary and related medical expenses. Minn. Stat. §176.136, subd. 1b(d) would deprive her of that right unless it is construed to apply only to medical providers subject to Minnesota jurisdiction. Any other interpretation violates her constitutional rights of equal protection and due process.

The Workers' Compensation Court of Appeals' decision should be reversed, and the Employer and Insurer should be held liable, as found by the trial court, for the usual and customary charges of the Wyoming medical providers.

Respectfully submitted,

FALSANI, BALMER, PETERSON,
QUINN & BEYER

Dated: 7/28/11



James B. Peterson (185012)

1200 Alworth Building

306 W. Superior Street

Duluth, MN 55802

(218) 723-1990

Attorneys for Employee-Relator

STATE OF MINNESOTA
IN SUPREME COURT

ANDREA A. SCHATZ,

Relator,

**CERTIFICATION
OF BRIEF LENGTH**

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Case No. A111171

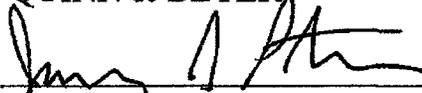
INTERFAITH CARE CENTER and
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Respondents.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,993 words. This brief was prepared using Microsoft Word (2007).

Dated: 7/29/11

FALSANI, BALMER, PETERSON,
QUINN & BEYER


James B. Peterson (185012)

1200 Alworth Building

306 W. Superior Street

Duluth, MN 55802

(218) 723-1990

Attorneys for Employee-Relator