IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

NEW MEXICO BOARD OF PHARMACY
NEW MEXICO MEDICAL BOARD

AND

INTERNATIONAL CHIROPRACTORS ASSOCIATION
Appellants,

v.

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS,
Appellee.

No. 31,690 [consolidated with 31,668]

Direct Appeal from Rulemaking by New Mexico Board of Chiropractic Examiners

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Brief in Chief & Request for Oral Argument

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For New Mexico Board of Chiropractic Examiners

Table of Contents

Table of Authorities

State Supreme Court Cases

State Court of Appeal Cases

Statutes

Rules

SUMMARY OF PROCEEDINGS

The Chiropractic Board concurs with the New Mexico Board of Pharmacy and New Mexico Medical Board's ("Appellants") statement on the Summary of Proceedings with two exceptions. First, the second sentence under "D. Summary of Facts Relevant to Issues Presented for Review" states the "statute further mandates that Appellee submit for approval...." Appellants' Brief in Chief, p. 3. The Chiropractic Board disputes the use of the verb "mandates" and asserts this sentence is a legal conclusion rather than a factual summary. Second, the last sentence on the first full paragraph on page 5 reads: "[a] year later, despite objections from Appellants...Appellee repealed and replaced the 2009 Formulary with a Formulary with an effective date of July 23, 2010." Appellants' Brief in Chief, p. 5. The International Chiropractors Association ("ICA Appellant") also referred to the 2010 rule-making hearing in its "Statement of Case." See ICA Appellants' Brief in Chief p. 2. The Chiropractic Board objects to this characterization of the 2010 rule-making process. If Appellants or ICA Appellants had wanted to contest the 2010 rule-making, they should have filed an appropriate appeal during that time period.

ARGUMENT

Standard of Review

The Chiropractic Board concurs with Appellants' statement on the Standard of Review.

I. The Chiropractic Board's interpretation of Section 61-4-9.2(A) and (B) is correct because it follows the canons of statutory construction.

There is a multi-year history in this matter involving past rule-making hearings, board member-to-board member meetings, litigation and mediation conferences. One thing is clear: this dispute over interpreting the law has not been easy to resolve. The Chiropractic Board's position is that the correct way to resolve the dispute is to use three separate canons of statutory construction to interpret the meaning of Section 61-4-9.2(A) and (B).

A. The Chiropractic Board's interpretation of Section 61-4-9.2(A) and (B) is correct because it follows the canon of statutory construction regarding the plain meaning of the text.

One canon of statutory construction is that a statute should be read according to its plain meaning. See State v. Michael S., 120 N.M. 617, 618, 904 P.2d 595, 596 (Ct. App. 1995) cert. denied 120 N.M. 533, 903 P.2d 844 (1995). The Chiropractic Board's position is that Section 61-4-9.2(A) and the first two sentences of Section 61-4-9.2(B) should be read according to their plain meaning. This argument can best be understood by examining the use of a commonly known

vitamin, such as Vitamin B12. Vitamin B12 is one of the items[1] at issue in this case.

The 2008 legislature created a new section of law and it was codified as NMSA 1978, Section 61-4-9.2. It read:

> A certified advanced practice chiropractic physician may prescribe, administer and dispense herbal medicines, homeopathic medicines, vitamins, minerals, enzymes, glandular products, naturally derived substances, protomorphogens, live cell products, gerovital, amino acids, dietary supplements, foods for special dietary use, bioidentical hormones, sterile water, sterile saline, sarapin or its generic, caffeine, procaine, oxygen, epinephrine and vapocoolants. A formulary shall be developed by the board and approved by the New Mexico medical board and the board of pharmacy.

2008 N.M. Session Laws, ch. 44, § 2 (new material underlined). This new law meant that if the Chiropractic Board wanted to authorize a Certified Advanced Practice Chiropractor ("Advanced Practice Chiropractor") to prescribe and administer a vitamin, such as Vitamin B12, the Board needed to first adopt a formulary via the rule-making process (hereinafter "formulary"). According to the

[1] This brief will use the term "items" instead of "drug" or "substances" whenever possible. ICA Appellant asserts that a substance becomes a drug when it is used to treat a patient. See ICA Appellant's Brief in Chief, p. 10. Assuming arguendo that ICA Appellant's proposition is accurate, it raises further statutory construction questions about why the 2009 legislature continued to use the term "substances" in the first, second and third sentences of NMSA 1978, Section 61-4-9.2(B) when it knew these items were going to be used to treat patients. These statutory construction questions are likely ancillary questions separate from issues raised in Appellants and ICA Appellant's Docketing Statements.

second sentence, the Medical Board and Pharmacy Board had to approve this formulary prior to the formulary becoming valid. If granted this approval, the plain language of the law allowed an Advanced Practice Chiropractor to prescribe and administer items off this list.

The 2008 legislature also added language to another section of law whereby an Advanced Practice Chiropractor's scope of work was expanded to include "prescriptive authority for therapeutic and diagnostic purposes." NMSA 1978, § 61-4-9.1 (2008).[2] However, not every chiropractor is an Advanced Practice Chiropractor. An Advanced Practice Chiropractor must obtain extra training, such as a "minimum of ninety clinical and didactic contact course hours in pharmacology, pharmacognosy, medication administration and toxicology" offered by an institution of higher education. Id. § 9.1(D). The institution of higher education cannot be a random school, it must be an institution approved of by the Medical Board. See id. An Advanced Practice Chiropractor must receive national credentials and complete at least three years of post-graduate clinical work or

[2] ICA Appellant has argued that the 2008 legislature simultaneously prohibited an Advanced Practice Chiropractor from prescribing and administering drugs by injection. See ICA Appellants' Brief in Chief, p. 7. This is inaccurate because the legislature amended the definition of "chiropractor" found in NMSA 1978, Section 61-4-2(C) and thus the language from ICA Appellants' brief applies to standard chiropractors. ICA Appellant has overlooked that the second to last sentence in Section 61-4-2(C) expressly distinguishes that Advanced Practice Chiropractors may administer "a drug by injection."

receive a graduate degree in a chiropractic clinical practice specialty. Id. § 9.1 (B), (C).

The 2009 legislature amended Section 61-4-9.2 in the following manner:

> A. A certified advanced practice chiropractic physician may prescribe, administer and dispense herbal medicines, homeopathic medicines, over-the-counter drugs, vitamins, minerals, enzymes, glandular products, ~~naturally derived substances,~~ protomorphogens, live cell products, gerovital, amino acids, dietary supplements, foods for special dietary use, bioidentical hormones, sterile water, sterile saline, sarapin or its generic, caffeine, procaine, oxygen, epinephrine and vapocoolants. ~~A formulary shall be developed by the board and approved by the New Mexico medical board and the board of pharmacy.~~

2009 N.M. Session Laws, ch. 260, § 1 (new material underlined, deleted material struck). According to the plain meaning of Subsection A, if the Chiropractic Board still wanted to authorize an Advanced Practice Chiropractor to prescribe and administer a vitamin, such as Vitamin B12, the Board needed to adopt a formulary. The Medical Board and Pharmacy Board, however, did not need to approve this formulary prior to the formulary becoming valid.

The 2009 legislature also added three sentences to a brand new Subsection (B). The first sentence read:

> B. A formulary that includes all substances listed in Subsection A of this section, including compounded

> preparations for topical and oral administration, shall be developed and approved by the board.

The second sentence read:

> A formulary for injection that includes the substances in Subsection A of this section that are within the scope of practice of the certified advanced practice chiropractic physician shall be developed and approved by the board.

The third sentence read:

> Dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in Subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval.

2009 N.M. Session Laws, ch. 260, § 1 (new material underlined). According to the plain meaning of first sentence of Subsection B, if the Chiropractic Board wanted to authorize an Advanced Practice Chiropractor to prescribe and administer a vitamin, such as Vitamin B12, by oral or topical (skin) administration, the Board would need to take an internal two-step approach. First, the Chiropractic Board would need to identify if "vitamins" were included in the list in Subsection A. Second, since vitamins are listed in Subsection A, the Chiropractic Board could adopt a formulary authorizing the prescription and administration of Vitamin B12 by oral or topical use. The Medical Board and Pharmacy Board did not need to approve this formulary prior to the formulary becoming valid.

According to the plain meaning of the second sentence of Subsection B, if the Chiropractic Board wanted to authorize an Advanced Practice Chiropractor to prescribe and administer a vitamin, such as Vitamin B12, by injection, the Board would need to take a three-step internal approach. First, the Chiropractic Board would need to identify if "vitamins" were included in the list in Subsection A. Second, since vitamins are in Subsection A, the Chiropractic Board would have to ensure any formulary that authorized the use of Vitamin B12 authorized it in a manner that was consistent with the scope of practice (i.e. therapeutic and diagnostic purposes as described in Section 61-4-9.1). Third, the Chiropractic Board could then adopt a formulary authorizing this prescription and administration of Vitamin B12 by injection. The Medical Board and Pharmacy Board did not need to approve this formulary prior to the formulary becoming valid.

The Chiropractic Board adopted its 2011 Formulary and it included a category "substances by injection." See 16.4.15.11(F) NMAC. Within this category was the item Vitamin B12 (in three forms, cyanocobalamin, hydroxocobalamin, methycobalamin) and the use was provided for in a manner for therapeutic and diagnostic purposes. See 16.4.15.11.F(9)(c), (e), and (f) NMAC. According to the plain meaning of the above-cited statutes, the Chiropractic Board

had authority to adopt the formulary and did not need to obtain the Medical Board and Pharmacy Board's approval prior to the formulary becoming valid.

This analysis begs these questions: what about the third sentence of Subsection B? Does it also have a plain meaning?

B. Appellants' interpretation of the third sentence of Section 61-4-9.2(B) is wrong because it violates the canon of statutory construction that other sentences cannot be read to be surplusage.

1. Appellants' argument is equivalent to a mathematical proof.

Appellants appear to argue that the plain meaning of the third sentence of Section 61-4-9.2(B) is that if the Chiropractic Board wants to adopt formulary, then Appellants have to approve all of the dangerous drugs, all of the controlled substances, all of the drugs for administration by injection and all of the substances not listed in Subsection A prior to the formulary becoming effective. This means Appellants do have to approve the prescription and the administration of the injection of Vitamin B12 on the formulary. According to their interpretation, it does not matter that vitamins are included on the list in Subsection A nor does it matter that Vitamin B12 can be prescribed and administered by injection under the second sentence of Subsection B.

Appellants appear to focus on the phrases "dangerous drugs" and "shall be submitted to the board of pharmacy and the New Mexico medical board for

approval." Their brief reads: "drugs that are administered via injection into the human body are classified by law as 'dangerous drugs'...." Appellants' Brief in Chief, p. 12. This means all items that are administered via injection are "dangerous drugs." Or stated in another way, it does not matter to Appellant what is listed in Subsection A (i.e. vitamins or herbs) because once those items are administered via injection, they require a prescription and they are transformed into "dangerous drugs."

Their legal rationale is that the Board of Pharmacy has adopted a rule that defines a dangerous drug as any item that requires a prescription. See Appellants' Brief in Chief, p. 12. This really limits the power of an Advanced Practice Chiropractor's prescriptive authority regarding the formulary. The Chiropractic Board notes that the statutory definition of "dangerous drug" is different than the Board of Pharmacy's regulatory definition. The statutory definition reads it is an item "other than a controlled substance...that because of a potentiality for harmful effect...is not safe except under the supervision of a practitioner licensed by law to direct the use...." NMSA 1978, § 26-1-2(F) (2011).

Overall, Appellants' argument can be viewed as a mathematical proof that A = B and B = C, therefore A = C. In their proof, A equals "items administered by injection" and B equals "dangerous drugs" and C equals "must be approved by Appellant." If we plug these terms into the proof, it means an item administered

by injection ("A") is equal to a dangerous drug ("B") and a dangerous drug ("B") must be approved by Appellants ("C") and therefore any and all items administered by injection ("A") must be approved by Appellants ("C"). Assuming arguendo, that Appellants' argument about dangerous drugs is correct, there are several pertinent questions: What does the second sentence of Section 61-4-9.2(B) mean? If every item that is injected becomes a dangerous drug, then what power was the legislature trying to give the Chiropractic Board in the second sentence?

2. Appellants' interpretation turns the second sentence into surplusage.

There is a second canon of statutory construction that is applicable to this matter. "A statute must be construed so that no part of the statute is rendered surplusage or superfluous." Katz v. N.M. Dept. of Human Services, 95 N.M. 530, 534, 624 P.2d 39, 43 (1981). The words of the second sentence cannot be read as surplusage or superfluous. They must mean something.

Appellants argue that the second sentence is a grant of authority to develop a formulary and the third sentence places a limitation on that authority. See Appellants' Brief in Chief, p. 21. If so, it would have been clearer if the legislature had expressly added the phrase "shall be submitted to the Board of Pharmacy and Board of Medicine" to the end of the second sentence. Appellants' theory, however, raises its own questions. Why didn't the legislature similarly write a grant of authority sentence for the phrases "controlled substances" or for

"substances not found in Subsection A" that are also referred to in the third sentence? Are they subject to limits without a grant of authority? And why did the legislature put the phrase "drugs for administration by injection" into the third sentence? Isn't that phrase duplicative and swallowed up by the phrase "dangerous drugs" already in the same sentence?

The Chiropractic Board contends that the third sentence, as argued by Appellant, is not clear under a plain meaning reading. The more one reads and re-reads the second and third sentences together, the more they seem like a jig saw puzzle. There may be two pieces that at first may seem to fit together, but the other pieces do not fit and cannot be conveniently ignored. Therefore, based on this lack of clear meaning, this Court should use another canon of statutory construction to read the third sentence.

C. The Chiropractic Board's interpretation of Section 61-4-9.2(A) and (B) is correct because it follows the canon of statutory construction regarding the re-punctuation of a sentence.

There is a third canon of statutory construction that is applicable to this matter. The New Mexico State Supreme Court has written: "In construing a statute, a court will ... re-punctuate to arrive at the legislative meaning." City of Roswell v. Hall, 45 N.M. 116, 119, 112 P.2d 505, 508 (1941). During the Chiropractic Board's 2011 rule-making hearing on the adoption of the formulary, the Board heard testimony from two chiropractors who were familiar with the

genesis of the 2008 and 2009 adoption of Section 61-4-9.2. Dr. Stephen Perlstein testified: "I'm also one of the people who has been present from the beginning, as well as being the expert witness on all of the legislation that we have put forth." CHIRO 265 Chiropractic Board's August 30, 2011 Rule-Making Hearing Transcript ("Tr.") p. 59, lines 4-6. Dr. Robert Jones explained the history of the matter. CHIRO 242-250 (Tr. p. 36, line 22 to p. 44, line 5). According to them, proponents of the new law viewed the items listed in Subsection A as natural substances. According to Dr. Jones, there was a debate whether the Chiropractic Board should have oversight over natural items, but not over "non-natural substances." CHIRO 253 (Tr. p. 47, line 19).

Dr. Perlstein testified that supporters of the new law wanted the items listed in Subsection A, regardless of the mode of administration, to be within the exclusive oversight of the Chiropractic Board. The items not listed in Subsection A would need Medical Board and Pharmacy Board approval. "The intention of going back to the legislature in 2009 was to delineate [substances in] Section A from everything else." CHIRO 267 (Tr. p. 61, lines 20-22). The proponents thought they had a third sentence worked out to read: "Dangerous drugs or controlled substances and drugs for administration by injection not listed in Section A shall be submitted to the Board of Pharmacy and the New Mexico Medical Board for approval." CHIRO 267 (Tr. p. 61, lines 5-9). In turn, this made the

second sentence make more sense because it authorized the Chiropractic Board to adopt a formulary for items listed in Subsection A that could be used by administration by injection. Those items not listed in Subsection A that could be used by administration by injection would need the Medical Board and Pharmacy Board's approval.

Dr. Perlstein testified that this was not what happened. He stated: "So in the law, the [legislative council] drafter took that and put a comma. He put a comma after "dangerous drugs or controlled substances," and that set that off, dangerous drugs or controlled substances. And that distinguished it, that took it apart from that listed in Section A. CHIRO 267 (Tr. p. 61, lines 10-15).

New Mexico courts have a mixed view of using legislative history to construe a statute. See Regents of UNM v. Federation of Teachers, 1998-NMSC-020, ¶ 30, 125 N.M. 401, 411, 962 P.2d 1236, 1246; ("It is the policy of New Mexico courts to determine legislative intent primarily from the legislation itself"); Draper v. Mountain States Mut. Cas. Co., 116 N.M. 775, 777, 867 P.2d 1157, 1159 (1994) ("We also may look to the history and background of a statute to determine the meaning of the language."). Therefore, this Court may assign whatever weight to the testimony of Dr. Perlstein and Dr. Jones it deems appropriate, however, the testimony does suggest some ideas how to best interpret the third sentence.

Perhaps one should read the third sentence with an emphasis on the phrase "not listed in Subsection A of this section." It would read: "Dangerous drugs or controlled substances, drugs for administration by injection and substances **not listed in Subsection A of this section** shall be submitted to the board of pharmacy and the New Mexico medical board for approval." Under this reading, the phrase "not listed in Subsection A" modifies a series of three items: (a) dangerous drugs or controlled substances; (b) drugs for administration by injection and (c) substances. One would just have to re-punctuate the sentence by removing the comma after "controlled substances" and replacing it with "and" in the sentence. The advantage of this approach is that the second and third sentences make sense together (new material underlined):

> A formulary for injection that includes the substances in Subsection A of this section that are within the scope of practice of the certified advanced practice chiropractic physician shall be developed and approved by the board.
>
> Dangerous drugs or controlled substances <u>and</u> drugs for administration by injection and substances not listed in Subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval.

There is another way to re-punctuate the sentence by adding commas. The Court of Appeals has previously written: "[A] comma separating the qualifying phrase applies to all antecedents, not solely the last antecedent." <u>Kevin J. v. Sager,</u>

2000-NMCA-012, ¶ 11, 128 N.M. 794, 796, 999 P.2d 1026, 1028. The addition of a comma after the second "substances" and after "section" would read (new material underlined):

> Dangerous drugs or controlled substances, drugs for administration by injection and substances, not listed in Subsection A of this section, shall be submitted to the board of pharmacy and the New Mexico medical board for approval.

Therefore, under this reading, if the Chiropractic Board would like to adopt a formulary, Appellants would have the power to approve: (a) dangerous drugs not listed in Subsection A; (b) controlled substances not listed in Subsection A; (c) drugs for administration by injection not listed in Subsection A and (d) all other substances not listed in Subsection A.[3]

There are multiple advantages to this approach. First, it establishes the line between those items in Subsection A and everything else. The Chiropractic Board would have exclusive authority to adopt the formulary governing the prescription

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[3] The Chiropractic Board anticipates that Appellant will argue in its Reply Brief that the inclusion of commas constitutes an activist reading of the third sentence. The Board notes that Appellants added their own commas and words in its explanation of the third sentence when they added a comma after "injection" and an "or" for an "and" in a Heading in its brief. See Appellants' Brief in Chief, p. 10; Heading I(A) ("Any Chiropractic Formulary That Includes A Dangerous Drug or Controlled Substance, a Drug for Administration by Injection, or Any Substance Not Listed in Section 61-4-9.2(A) Must Be Approved by Both Appellants") (new material underlined). This is not an indictment of Appellants. It does show that both parties are working on the punctuation in the third sentence.

and administration of those items listed in Subsection A. Second, it establishes that if the Chiropractic Board wanted to authorize an item beyond Subsection A, it would have two choices: (a) go to the legislature to amend Subsection A or (b) go to the Appellants and get their approval. Third, it removes this Court from having to make medical determinations in this matter. For example, the Board of Pharmacy's Docketing Statement and Appellants' Brief seems to suggest that it wants this Court to pass judgment on the propriety of having specific items, including but not limited to, epinephrine, dextrose, lidocaine and topical magnesium in the 2011 Formulary. See Appellants' Brief in Chief, pp. 15-16, 18. It is unclear whether Appellants have built a sufficient record to assist the Court in making these determinations. Instead, it seems more appropriate for the boards to look at the Subsection A list and handle the determinations on which item is on which side of the list.

Finally, this approach is consistent with above-mentioned canons of statutory construction and will be consistent with principles of equity. It is the Chiropractic Board's view that the statutes must be construed to view all of the boards as equals. Otherwise, Appellants can simply withhold their approval regarding the prescription and injection an item, such as Vitamin B12. This is not just speculation, Appellants admitted in their brief that the Medical Board "states its general objection to 'all injectables' proposed in the Formulary, and stated that

it would approve 'none' of the proposed injectables." Appellants' Brief in Chief, p. 17. The statutes cannot be construed in a way to create a situation where there is such an inequality between the boards.

II. The Chiropractic Board's interpretation of Section 61-4-9.2(A) and (B) is correct and therefore it did not violate any laws or rules.

If this Court agrees that the Chiropractic Board's interpretation of Section 61-4-9.2(A) and (B) is correct, then the Board did not need Appellants' approval of the 2011 formulary. If this Court agrees that the Chiropractic Board's interpretation of Section 61-4-9.2(A) and (B) is correct, then the Board acted according to its own rules regarding the 2011 formulary. The rules state the Chiropractic Board must "as by statute" seek consensus of Appellants. See 16.4.15.7E NMAC; 16.4.15.8A NMAC. If the statute allows the Chiropractic Board exclusive jurisdiction over Subsection A items, then "as by statute", the Board did not need to seek consensus on these items and did not violate its rules in adopting its 2011 formulary. There is one other rule that states: "[a]ll amendments to the formulary shall be made following consensus of the NM board of medicine, NM pharmacy board and the NM board of chiropractic examiners." 16.4.15.8H NMAC. This rule should be read to be consistent with the above-cited statutes and rules. It should not be read so broadly to require any and all amendments to be agreed upon by consensus or it would swallow the statute. For example, what if

the Chiropractic Board wanted to amend a section regarding items administered topically—does the Medical Board get to the power to block this change, too? The answer is no. A rule cannot enlarge its scope beyond the statutory directive. See Public Serv. Co of N.M. v. New Mexico Envtl. Improvement Bd., 99 N.M. 223, 227, 539 P.2d 638, 642 (Ct. App. 1976).

In the alternative, one could argue that consensus is a concept of general agreement and accommodation. The record reflects that the Chiropractic Board did incorporate many of Appellants' issues into the final formulary. This can be tracked in the record by comparing the proposed rule, the Board of Pharmacy's exhibit letter, Medical Board's exhibit letter and the Chiropractic Board's final formulary. CHIRO 035-036, 042, 083-086. Specifically, the Chiropractic Board, at Appellants' request, struck items that were not listed in Subsection A. This can be tracked in the record by reading the Chiropractic Board's rule-making hearing. CHIRO 278-281 (Tr. p. 72, line 1 to p. 75, line 13); CHIRO 407-409 (Tr. p. 201, line 19 to p. 203, line 8); CHIRO 443-449 (Tr. p. 237, line 1 to p. 243, line 19). The Chiropractic Board went through the items to determine if they were under Subsection A or not. CHIRO 280 (Tr. p. 74, lines 2, 17-18). The Chiropractic Board also accepted Appellants' recommendations on clarifying the precise modes of administration. CHIRO 413-415 (Tr. p. 207, line 21 to p. 209, line 13). As a specific example, the Chiropractic Board adopted the Board of Pharmacy's

recommendation and clarified the mode of administration for the injection of Vitamin B12 would be intra-muscular injection or subcutaneous injection. CHIRO 085. Finally, the Chiropractic Board adopted the Board of Pharmacy's recommendation that the Medical Board approve courses for training in the administration in the injection of autologous blood, collagenase, glucosamine, glycerin, sodium morrhaute and sodium hyaluronate found in 16.4.15.11(F)(12)-(14) and (17)-(18) NMAC. CHIRO 085-086. This was a significant accommodation because the Medical Board's statutory duty under Section 61-4-9.1(D) is only to approve the institutions of higher education that provide the training. Under the 2011 Formulary, the Medical Board will now approve the training courses (these courses are usually set up for a variety of health care practitioners to train side-by-side in the techniques) for the injection of autologous blood, collagenase, glucosamine, glycerin, sodium morrhaute and sodium hyaluronate.

III. Appellants have withdrawn their argument about 16.4.15.12 NMAC

The Chiropractic Board wants the record to reflect that Appellants have withdrawn their argument about 16.4.15.12 NMAC. See Appellants' Brief in Chief, p. 1 ("Appellants no longer challenge the formulary-related education rule at 16.4.15.12 NMAC, as preserved in the Docketing Statement."). ICA Appellant,

however, has still argued this issue. See ICA Appellant's Brief in Chief, pp. 14-15. ICA Appellant cannot provide a citation where the Medical Board is required under statute or rule to approve the content of the educational programs or alter the training hours (except for the above-cited changes). The Medical Board is only required to approve the institutions of higher education that provide the training courses. This argument (now dropped by even the Medical Board) cannot be used to bootstrap into ICA Appellant's larger attempt to block the adoption of the 2011 formulary.

ICA Appellant also cannot provide a citation demonstrating the Chiropractic Board has reduced the number of hours of instruction. The hours in NMSA 1978, Section 61-4-9.1 are a requirement and the hours in 16.4.15.12 NMAC are a requirement. An Advanced Practice Chiropractor has to do more under the 2011 formulary.

IV. The Chiropractic Board Requests Oral Argument

The Chiropractic Board requests oral argument. Oral argument would be helpful to the resolution of issues because it may assist the Court in understanding the facts, asking questions about the parties' construction of the statutes and evaluating the ramifications of the construction of the statutes.

V. Conclusion

The Chiropractic Board respectfully requests that this Court uphold its 2011 Formulary.

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I hereby certify that the foregoing **pleading** was served via mail to the following persons this August 30, 2012:

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