**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-566**

Western National Mutual Insurance Company,
Appellant,

vs.

Stand Up Mid-America MRI, Inc.,
Respondent.

**Filed November 30, 2010**
**Affirmed**
**Schellhas, Judge**

Hennepin County District Court
File No. 27-CV-09-6502

Richard S. Stempel, John C. Syverson, Stempel & Doty PLC, Hopkins, Minnesota; and

Michael W. Lowden, Lowden Law Firm, Minnetonka, Minnesota (for appellant)

Randall D.B. Tigue, Randall Tigue Law Office P.A., Golden Valley, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Shumaker, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## U N P U B L I S H E D  O P I N I O N

**SCHELLHAS**, Judge

Appellant challenges the district court's decision on summary judgment that, because respondent's violation of the corporate-practice-of-medicine doctrine was not knowing and voluntary, appellant is obligated to pay claims submitted by respondent. We affirm.

## FACTS

Respondent Stand Up Mid-America MRI Inc., n/k/a Stand Up Mid-America MRI P.A., is in the business of performing MRI scans on doctor-referred patients and providing the doctors with a report of findings from the scans. Respondent was incorporated in November 2003 under the Minnesota Business Corporation Act, Minn. Stat. §§ 302A.001–.917 (2002 & Supp. 2003). Respondent's sole shareholder has always been Wayne Dahl, D.C., a licensed chiropractor.

Respondent's service consists of both technical and professional components. First, a technologist performs an MRI scan on the referred individual. Although the State of Minnesota does not require that such technologists be licensed in any health-care profession, respondent employs certified radiologic technologists. Respondent then sends the images from the MRI scan to an independent chiropractor or radiologist for a "professional radiologic interpretation" and findings. Respondent includes the findings of the chiropractor or radiologist in a report that it prepares for the referring doctor. The referring doctor uses the report to aid in the diagnosis and treatment of the individual.

According to Dr. Dahl, the chiropractors or radiologists do not analyze what they find and do not offer any diagnoses. Dr. Dahl explained, "What he's providing is the findings of what he actually sees. He's reporting what he sees. He's not analyzing it. . . . What he's doing is reporting what the findings are. Because these are exact findings, . . . you don't analyze, you report what you see and these are exact terms." Dr. Dahl testified that "[y]ou cannot diagnose someone you've never seen," and that there is no doctor-patient relationship between the chiropractor or radiologist and the referred individual.

Prior to incorporating in 2003, Dr. Dahl consulted an attorney for advice on the appropriate corporate structure for respondent and checked the Minnesota Secretary of State's website to determine what corporate form his competitors were using. He found that all were general business corporations, including some that were publicly traded. Both professionals and non-professionals owned the businesses. Nobody advised Dr. Dahl that his ownership or incorporation of respondent could constitute a violation of the corporate-practice-of-medicine doctrine (CPMD).

In September 2005, the supreme court released *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, in which it held that the CPMD exists in Minnesota, "that the corporate employment of chiropractors is prohibited except as expressly permitted by statute," and that a particular chiropractic clinic, which was organized as a general business corporation and owned by a layperson, was in violation of the doctrine. 703 N.W.2d 513, 515, 524 (Minn. 2005) (*Isles Wellness I*). The court also held that a massage-therapy clinic and a physical-therapy clinic owned by the same layperson were not in violation. *Id.*

Dr. Dahl was aware of *Isles Wellness I* but was not "learned . . . as to the implications." Following the decision, he sought further legal advice as to whether respondent, which was owned by a licensed chiropractor, had no chiropractor employees, and did not directly diagnose or treat patients, was affected. An attorney advised Dr. Dahl that because of the distinctions between respondent and the business involved in *Isles Wellness I*, respondent was not subject to the CPMD. Dr. Dahl stated in a sworn affidavit that he has never knowingly operated respondent in violation of the CPMD.

Between July 15, 2005, and May 7, 2008, respondent performed services for 14 doctor-referred individuals whose claims were submitted to their insurer, appellant Western National Mutual Insurance Co., a workers'-compensation and no-fault auto insurance carrier. On February 22, 2006, appellant sent respondent a letter with respect to one of its insured's claims, stating that its investigation indicated that respondent was "in violation of the MN Corporate Practices of Medicine Act" and that respondent's billing statement as to this claim was therefore void as a matter of public policy. Appellant sent respondent similar letters with respect to many of the other claims by these 14 insureds. Appellant paid the bills for three of its insureds in the amount of $13,425.96, but has not paid the bills of the remaining 11 insureds, leaving $31,310.30 outstanding.

***Allstate Litigation***

Meanwhile respondent was involved in a similar dispute with Allstate Insurance Co. related to services provided to one of its insureds in August 2005. Respondent sued Allstate to collect payment for its services, and Allstate asserted the CPMD as a defense.

The district court denied respondent's motion for summary judgment on May 22, 2008, ruling that the CPMD applied to respondent. Dr. Dahl immediately reincorporated respondent under the Minnesota Professional Firms Act, Minn. Stat. §§ 319B.01–.12 (2006 & Supp. 2007).

After a trial, the district court determined that although respondent had violated the CPMD when it provided its services to Allstate's insured, its bill for services was not void because respondent had not knowingly and intentionally operated in violation of the CPMD under *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 95 (Minn. 2006) (*Isles Wellness II*). Allstate appealed, and this court affirmed. *Stand Up Mid Am. MRI, Inc. v. Allstate Ins. Co.*, No. A09-1108, 2010 WL 1440199 (Minn. App. Apr. 13, 2010). In that appeal, respondent did not challenge the district court's determination that it was subject to and had violated the CPMD.

***This Litigation***

Appellant commenced this action on January 27, 2009, alleging that respondent violated the CPMD when it provided services to appellant's 14 insureds, seeking a declaration that the bills for services were void, and seeking to recoup the $13,425.96 it had already paid on its insureds' claims. Respondent counterclaimed to collect on the unpaid bills. The district court denied appellant's motion for summary judgment and granted respondent's motion, concluding that even though respondent had operated in violation of the CPMD, based on the undisputed facts, respondent had not knowingly and intentionally done so, and its bills were therefore not void. The court ordered judgment in favor of respondent in the amount of $31,310.30. This appeal follows.

## D E C I S I O N

Summary judgment is granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On review, this court "determine[s] whether there are any genuine issues of material fact and whether the district court erred in its application of the law." *Isles Wellness I*, 703 N.W.2d at 516. The court must "view the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.*

The CPMD is a common-law prohibition against corporations engaging in health-care practice "through the employment of licensed professionals except pursuant to specific statutory or regulatory exceptions." *Id.* at 516–17. Policy reasons underlying the CPMD include the "corporation's inability to satisfy the training and licensure requirements" of health-care practice, along with "concerns raised by the specter of lay control over professional judgment, commercial exploitation of health care practice, and the possibility that a health care practitioner's loyalty to a patient and an employer will be in conflict." *Id.* at 517.

> Proficiency in [health-care] occupations requires long years of special study and of special research and training and of learning in the broad field of general education. Without such preparation proficiency in these professions is impossible. The law recognizes them as a part of the public weal and protects them against debasement and encourages the maintenance therein of high standards of education, of ethics and of ideals. It is for this purpose that rigid examinations are required and conducted as preliminary to the granting of a

> license. The statutes could be completely avoided and rendered nugatory, if one or more persons, who failed to have the requisite learning to pass the examination, might nevertheless incorporate themselves formally into a corporation in whose name they could practice lawfully the profession which was forbidden to them as individuals. A corporation, as such, has neither education, nor skill, nor ethics. These are sine qua non to a learned profession.

*Id.* at 517–18 (quoting *State v. Bailey Dental Co.*, 234 N.W. 260, 262–63 (Iowa 1931)). In deciding whether a particular business is subject to the CPMD, the court considers (1) whether the practitioners are engaged in "healing," (2) whether a license is required by law, (3) whether the profession requires "significant training and education," and (4) whether practitioners "enjoy independent professional judgment." *Id.* at 522; *see also* Minn. Stat. § 146.01 (2008) (defining the "practice of healing").

In *Isles Wellness I*, the supreme court applied these considerations to determine whether three lay-owned general business corporations—one chiropractic clinic, one massage-therapy clinic, and one physical-therapy clinic—were operating in violation of the CPMD. 703 N.W.2d at 515. The court held that the practice of massage therapy is not subject to the CPMD, because "no training or licensure is required" by law, and thus "much of the underlying rationale of the prohibition on corporate practice is inapplicable." *Id.* at 522. The court also held that the CPMD did not apply to the practice of physical therapy, noting that "physical therapists do not enjoy unfettered independent medical judgment," and that "the public policy concerns regarding a conflict of interest between the health care provider and the lay person or entity are lessened as the physical therapist is treating under the order of referral or periodic review of other

specific health care providers." *Id.* at 523. But the court held that the practice of chiropractic is subject to the CPMD, noting that "[c]hiropractors treat patients directly and are not required to be under the supervision of another licensed health care professional," that the "corporate practice of chiropractic raises the public policy concerns that corporate employers could interfere with independent medical judgment," that "[t]he practice of chiropractic is expressly included in the definition of healing" under Minn. Stat. § 146.01, and that the legislature "specifically recognized chiropractic as a 'professional service' for purposes of the Minnesota Professional Firms Act" in Minn. Stat. § 319B.02, subd. 19 (2004). *Isles Wellness I*, 703 N.W.2d at 523–24.

Here, respondent does not challenge the district court's conclusion that it was operating in violation of the CPMD when it provided services for appellant's 14 insureds. But the fact that a clinic is operating in violation of the CPMD does not necessarily void its right to collect from an individual's insurer under an assignment of insurance benefits. *See Isles Wellness II*, 725 N.W.2d at 94 ("This court's jurisprudence does not support creating a per se rule, which would void all contracts entered into in violation of the [CPMD] as a matter of public policy."). Instead we "will not void a contract unless it is established that the corporation's actions show a knowing and intentional failure to abide by state and local law." *Id.* at 95. This is because "[p]ermitting insurance companies to avoid liability under their insurance contracts does little to protect patients from the 'specter of lay control over professional judgment.'" *Id.* (quoting *Isles Wellness I*, 703 N.W.2d at 517).

Appellant first argues that this court's opinion in *Stand Up Mid Am. MRI, Inc. v. Allstate Ins. Co.*, 2010 WL 1440199, set out a "bright-line" rule for respondent that any violation of the CPMD by it after *Isles Wellness I* was necessarily knowing and intentional. We disagree. First, unpublished opinions of the court of appeals are not precedential, Minn. Stat. § 480A.08, subd. 3 (2008), and appellant does not argue that res judicata or collateral estoppel applies. Second, although appellant is correct that all the claims addressed in *Stand Up Mid Am. MRI, Inc. v. Allstate Ins. Co.* arose before *Isles Wellness I*, this court made no statement about whether claims arising *after Isles Wellness I* would be valid and gave no hint of the per se rule appellant attempts to conjure. And, the supreme court expressly declined to establish a "per se rule." *See Isles Wellness II*, 725 N.W.2d at 94. Nothing in *Stand Up Mid Am. MRI, Inc. v. Allstate Ins. Co.* suggests that anything other than *Isles Wellness II*'s "knowing and intentional" standard should apply to respondent in this case.

Citing a panoply of maxims along the lines of "ignorance of the law is no defense," appellant next argues that the *Isles Wellness I* decision "attribute[d] knowledge" to respondent that it was organized and practicing in violation of the CPMD, and that respondent "knew or should have been on notice that its activities violated the CPMD" as of the date of *Isles Wellness I*'s release. Appellant cites *Barlow v. United States*, 32 U.S. 404, 411 (1833), for the proposition that any other standard would implicate "the extreme danger of allowing such excuses to be set up for illegal acts to the detriment of the public."

But even if respondent "should have been on notice" that it was operating in violation of the CPMD as of the date of *Isles Wellness I*, this is not the standard adopted by the supreme court. Instead, in *Isles Wellness II*, the supreme court said that we must only void contracts where the violation was "knowing and intentional." 725 N.W.2d at 95. *Isles Wellness II* contains no suggestion that anything less than actual knowledge is required; indeed, a requirement of actual knowledge best summarizes the supreme court's policy statement that "[p]ermitting insurance companies to avoid liability under their insurance contracts does little to protect patients from the specter of lay control over professional judgment." *Isles Wellness II*, 725 N.W.2d at 95 (quotation omitted). Therefore, the issue in this case is simply whether respondent knowingly and intentionally violated the CPMD at the time it rendered its services to appellant's insureds.

The undisputed evidence establishes that respondent did not knowingly and intentionally violate the CPMD. Dr. Dahl stated in his affidavit that he has never knowingly operated respondent in violation of the CPMD. Appellant has offered no contrary evidence whatsoever. And the undisputed circumstantial evidence bolsters Dr. Dahl's sworn statement. Respondent is distinguishable from the chiropractic clinic in *Isles Wellness I* in that it is owned by a licensed professional, it does not provide chiropractic diagnosis or treatment to patients, and it does not directly employ any licensed chiropractors. Following the decision in *Isles Wellness I*, respondent sought and obtained legal advice on the effect of *Isles Wellness I* on its business, and legal counsel advised respondent that it was not subject to the CPMD. As soon as the district court

ruled otherwise in the Allstate litigation, Dr. Dahl reorganized respondent as a professional corporation. These undisputed facts reinforce Dr. Dahl's position that he did not knowingly operate respondent in violation of the CPMD. Rather, as in *Isles Wellness II*, "the record shows an obvious intent to try to comply with Minnesota law." 725 N.W.2d at 95.

Because the undisputed evidence shows that respondent did not knowingly and intentionally violate the CPMD, the district court correctly granted summary judgment to respondent.

**Affirmed.**