

STATE OF NEW MEXICO
COUNTY OF CURRY
NINTH JUDICIAL DISTRICT COURT

Stephen H. Haynes, M.D. P.A.
and American Physicians
Assurance Corporation

Plaintiffs

v.

No.

Morris J. Chavez, in his official capacity as
Superintendent of the New Mexico
Department of Insurance,


Defendants

TEMPORARY RESTRAINING ORDER

THIS MATTER having come before the Court on the Plaintiffs' Application for Temporary Restraining Order (TRO) and Preliminary Injunction, the Court having examined said Application and Complaint filed in this action, and being otherwise fully advised in the premises, FINDS:

1. Plaintiffs have filed a Complaint for Injunctive Relief and Declaratory Judgment and an Application for a Temporary Restraining Order and Preliminary Injunction. The Superintendent's erroneous interpretation of the Medical Malpractice Act contained in a memorandum dated October 28, 2009 improperly casts doubt or precludes physician corporate entities from becoming qualified health care providers under the Act.
2. The Court has considered and finds that a Temporary Restraining Order shall issue, because it clearly appears from the facts shown by affidavit that immediate and irreparable injury, loss and damage will result to the applicants before the adverse party

FILED IN OPEN COURT
this 19th day of Nov, 2009
at 6:00 o'clock P m


DAVID REEB
District Judge

can be heard in opposition. Counsel for the Defendant has been notified of the filing of the application and complaint and the hearing on the Temporary Restraining Order.

3. ~~The Court finds there is a substantial likelihood that Plaintiffs will prevail on the merits.~~ *OK*


The Court finds that immediate and irreparable injury will occur if the injunctive relief and temporary restraining order are not granted. The Court finds that the public interest and the equities support the grant of this relief. The Court has considered and determined that no security is necessary. The Court finds that the statute in question, the supporting case law, the Attorney General decisions and the long-standing practices of covering physician corporations and organizations makes it imperative that the status quo is maintained and the Superintendent's Memorandum is rejected. The harm to the Plaintiffs and to the New Mexico consumers is clear. The uncertainty, risk and damages caused by the Memorandum must be addressed immediately. The Court finds that Plaintiffs cannot comply with the directive of the Superintendent due to existing law and regulations.

IT IS THEREFORE ORDERED that Plaintiffs' Application for Temporary Restraining Order (TRO) is granted; the Superintendent of Insurance shall 1) specifically rescind the Memorandum dated October 28, 2009 2) continue to accept proof of financial responsibility documents and Patients Compensation Fund surcharges from physician owned corporations providing medical care and professional services to patients through their employee doctors of medicine.

IT IS FURTHER ORDERED that physician corporate entities are entitled to protection as qualified health care providers under the New Mexico Medical Malpractice Act.

IT IS THEREFORE FURTHER ORDERED that the Defendants shall appear before this Court to show cause why it should not comply with this Order and for a hearing on Plaintiffs' Request for a Preliminary Injunction which are set for December 2, 2009 at 1:15pm.

^{until} December 2, 2009.
THIS ORDER shall be effective for ten days, or ~~until further order of this Court~~

Honorable 
District Court Judge, Ninth Judicial District