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NO. 101417-1

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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THOMAS J. YOUNG,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE  
STATE OF WASHINGTON,

Respondent.

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**DEPARTMENT OF LABOR AND INDUSTRIES  
ANSWER TO PETITION FOR REVIEW**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ISSUES PRESENTED.....	1
III.	STATEMENT OF THE CASE .....	2
	A. Statutory Background .....	2
	B. Young Was Admitted to the Provider Network with a Limited Ability to Prescribe Medication.....	3
	C. Young Voluntarily Surrendered His DEA Registration Because He Prescribed Outside His Prescribing Authority.....	4
	D. The Department Removed Young from the Provider Network.....	7
	E. The Department Informed Young of Its Decision .....	8
	F. The Board Affirmed Young’s Removal from the Provider Network.....	10
IV.	ARGUMENT.....	11
	A. Revoking Provider Network Membership Is Appropriate when DEA Licensure Is Revoked.....	12
	B. The Department Properly Considered Young’s Reconsideration Request Within the Regulatory Timeframe .....	15
	C. The Billing Audit Has No Preclusive Effect on the Medical Practices Action.....	16

D. The Legality of the Department’s Letter to Patients Is Not Before the Court.....	17
E. Young’s Remaining Issues Also Do Not Warrant Review.....	18
V. CONCLUSION.....	20

## TABLE OF AUTHORITIES

### Cases

<i>Crystal Ridge Homeowners Ass’n v. City of Bothell</i> , 182 Wn.2d 665, 343 P.3d 746 (2015) .....	20
<i>Spokane County ex rel. Sullivan v. Glover</i> , 2 Wn.2d 162, 97 P.2d 628 (1940) .....	15
<i>Young v. Dep’t of Lab. &amp; Indus.</i> , No. 55859-9-II (Wash. Ct. App. July 12, 2022) (unpublished).....	11

### Statutes

Laws of 2011, ch. 6, § 1 .....	2
RCW 18.130.180(7).....	7
RCW 18.130.180(12).....	7
RCW 18.36A.020(10).....	7
RCW 51.36.010(1).....	2
RCW 51.36.010(2).....	2
RCW 51.36.010(6).....	2
RCW 51.36.010(9).....	17
RCW 51.52.110 .....	19

### Rules

RAP 10.3 .....	11
----------------	----

RAP 13.4(b)(4) .....12

**Regulations**

WAC 296-20-01030 .....2, 4, 9, 13  
WAC 296-20-01030(7)(a).....10, 14  
WAC 296-20-01030(8).....13  
WAC 296-20-01030(8)(b) .....9, 10  
WAC 296-20-01050(3)(a).....11  
WAC 296-20-01080 ..... 8  
WAC 296-20-01090(4).....15  
WAC 296-20-015 ..... 8  
WAC 296-20-015(5).....2, 10  
WAC 296-20-015(5)(c) ..... 2

## **I. INTRODUCTION**

Dr. Thomas Young surrendered his United States Drug Enforcement Administration (DEA) registration after he illegally prescribed narcotics to his patients. The Department of Labor and Industries properly removed him from its provider network for failing to abide by the Industrial Insurance Act's minimum standards, including the requirement that a practitioner's license remain unencumbered by restrictions. Young shows no error in the Court of Appeals' opinion upholding the Department's well-supported decision. Instead, Young's petition merely rehashes his previous arguments, and he points to no issue warranting this Court's review.

## **II. ISSUES PRESENTED**

1. Does substantial evidence support Young's removal from the Department's provider network when he surrendered his DEA registration and had an encumbrance on his naturopathic license?

2. Would any of his claimed legal errors have affected the outcome such that he could remain in the provider network?

### **III. STATEMENT OF THE CASE**

#### **A. Statutory Background**

In 2011, the Legislature directed the Department to create a provider network to “establish minimum standards” for providers who treat injured workers under the Industrial Insurance Act. RCW 51.36.010(1); Laws of 2011, ch. 6, § 1. The Legislature authorized the Department to remove providers from the network if they fail to meet minimum standards. RCW 51.36.010(2), (6).

The minimum standards are in WAC 296-20-01030. “The Department can deny, revoke, suspend, limit, or impose conditions on a health care provider’s authorization to treat workers . . . .” WAC 296-20-015(5). Any “type of limitation of a practitioner’s license to practice by any court, board, or administrative agency” is a basis for taking action against a provider’s ability to treat workers. WAC 296-20-015(5)(c).

**B. Young Was Admitted to the Provider Network with a Limited Ability to Prescribe Medication**

Young is a chiropractor and naturopath who has treated injured workers in Washington since the 1980s.

AR Young (10/13/16) 26-27.<sup>1</sup> He joined the provider network in 2012. Ex 3. As a naturopath, Young is allowed to prescribe some drugs, which are not controlled substances but still require a prescription (such as antibiotics and cortisone creams). AR Achbach 82-83. A naturopath can prescribe certain controlled substances, provided the naturopath has a DEA registration number. AR Achbach 72. Naturopaths are not allowed to prescribe Schedule II controlled substances, including fentanyl. AR Achbach 72-73; AR Young (9/29/16) 128-29; *see also* AR Young (10/13/16) 54. Around March

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<sup>1</sup> The testimony is referred to as “AR” followed by witness last name, date of testimony if it occurred on more than one day, and page number of the transcript for the day the testimony occurred. The testimony and exhibits are not consecutively numbered.



2012, Young applied for a DEA registration number. AR Young (9/29/16) 127.

In 2012, Young applied to be part of the Department's provider network. Ex 17; AR Young (9/29/16) 118-19. In Young's Provider Agreement, he agreed he would provide injured workers with treatment that complied with the law. AR Young (9/29/16) 141-42; Ex 3. And he agreed the Department could terminate the agreement if he no longer met the minimum provider network standards in WAC 296-20-01030. AR Young (9/29/16) 142; Ex 3.

**C. Young Voluntarily Surrendered His DEA Registration Because He Prescribed Outside His Prescribing Authority**

The DEA's Seattle field office investigator, Kevin Bigler, received a notification from Washington's Naturopathic Board that it was investigating Young. AR Achbach 70, 74. The DEA investigators queried the prescription monitoring program and determined that Young wrote 101 prescriptions outside his prescribing authority between February 2012 and January 2014.

AR Achbach 75. Young prescribed fentanyl, a Schedule II controlled substance that is “a very strong narcotic drug” with “a long list of side effects.” AR Young (9/29/16) 128-29.

In March 2014, Bigler and Heather Achbach, DEA Diversion Investigator, visited Young at his clinic. AR Young (10/13/16) 29; AR Achbach 70-71, 75. They informed him they investigated his controlled substance prescribing, AR Young (10/13/16) 31, and that they “were giving him the opportunity to voluntarily surrender his DEA number in the State of Washington in lieu of administrative proceedings.” AR Achbach 75.

A few days later, Young entered into a settlement agreement. AR Young (10/13/16) 31-32; Ex 19. In the agreement, he admitted he prescribed controlled substances outside his prescribing authority. AR Young (10/13/16) 54. The DEA categorized the surrender of his registration as a “surrender for cause” as it had “probable reason to submit administrative proceedings to revoke a registration should the

registrant refuse to sign a voluntary surrender.” AR Achbach 79.

Young admitted he prescribed Schedule II controlled substances. AR Young (9/29/16) 128. Naturopaths are not allowed to prescribe Schedule II controlled substances. AR Achbach 72-73. Young admitted he prescribed medications outside his prescriptive authority for ten different patients about 100 times in total. AR Young (9/29/16) 131-32, 139.

On March 22, 2014, Young voluntarily surrendered his DEA registration for cause in lieu of further investigation. Ex 19; AR Young (10/13/16) 30-31. And he was restricted from re-applying for a DEA number until he fulfilled certain requirements. AR Young (10/13/16) 54.

The Washington State Department of Health (DOH) also investigated Young. *See* AR Fury 86; Ex 18. Young entered into an agreed order with DOH in September 2014 about his prescribing activities. Ex 4. He agreed that he prescribed carisoprodol, alprazolam, zolpidem, meth[y]lphenidate,

diazepam, lorazepam, and fentanyl, which were all outside the scope of his naturopathic license. Ex 4 at 2.

In the 2014 DOH agreed order, Young admitted to committing unprofessional conduct in violation of RCW 18.130.180(7), RCW 18.130.180(12), and RCW 18.36A.020(10). AR Young (9/29/16) 140-41; Ex 4 at 2. The order stated, “The disciplining authority determined that a period of probation and restriction on prescribing authority will serve to protect the health, safety, and welfare of the public.” Ex 4 at 3. The order directed that DOH would monitor Young’s naturopathic license for 30 months. *Id.* Young also agreed he “shall surrender his DEA registration.” *Id.* He had already surrendered it six months earlier in his agreement with the DEA. Ex 19.

**D. The Department Removed Young from the Provider Network**

The Department’s provider network has over 24,000 participating doctors. AR Franklin 10. The Department applies its provider network requirements when a provider applies to

the network and is “constantly monitoring things and watching for issues that arise,” such as a DOH action. *See* AR Franklin 11.

Because of the DOH and DEA issues, the Department investigated Young, and then revoked his provider network membership. AR Franklin 14, 16-17.

**E. The Department Informed Young of Its Decision**

On August 10, 2015, the Department issued an Order and Notice informing Young that his authorization to treat injured workers was revoked. Ex 6. The August 2015 order informed him the Department “suspended/revoked [his] authorization to treat injured workers in compliance with WAC 296-20-015, suspended [him] from the provider network under WAC 296-20-01080 and terminated [his] provider agreement.” Ex 6 at 1. It notified him that the Department took this action because DOH placed his license under monitoring and that WAC 296-20-015 allows the Department to suspend a provider’s

authorization to treat workers if their license “is placed in probation or other type of limitation.” *Id.*

The August 2015 order also stated Young did not meet provider network standards in WAC 296-20-01030 because he failed to meet the standards in several rules about standard of care. *Id.* at 1-2.

On September 25, 2015, the Department issued another Order and Notice that corrected and superseded the August 10, 2015 one, again informing Young it was removing him from the provider network, citing the same rule violations. AR 238-40; Ex 10. In addition, the September 2015 order stated he failed to meet the minimum provider network standards because he violated WAC 296-20-01030(8)(b), which provides “[t]he provider must not have surrendered, voluntarily or involuntarily his or her DEA registration in any state while under investigation or due to findings resulting from the provider’s acts, omissions, or conduct.” Ex 10 at 2.

On September, 28, 2015, Young requested reconsideration of the August 2015 order, Ex 7, and the Department sent him a letter acknowledging it received his request. Ex 8. On October 7, 2015, Young requested reconsideration of the September 2015 order. Ex 11.

The Department considered the request and denied it on January 4, 2016, affirming the September 25, 2015 order. AR 238-40; Ex 12. The January 2016 order is the Department's final order. AR Franklin 56.

**F. The Board Affirmed Young's Removal from the Provider Network**

Young appealed the January 2016 Order to the Board of Industrial Insurance Appeals, which determined Young violated the following rules (among others):

- WAC 296-20-015(5) because "Dr. Young had a limitation on his naturopathic license" (CL 2);
- WAC 296-20-01030(7)(a) because "Dr. Young's license was not free from restrictions, limitations or conditions related to his clinical practice" (CL 4);
- WAC 296-20-01030(8)(b) because Dr. Young surrendered his DEA registration while under

- investigation or because of findings resulting from the provider's acts, omissions, or conduct (CL 5);
- WAC 296-20-01050(3)(a) because "Dr. Young failed to meet minimum healthcare provider network standards" (CL 6).

AR 3, 123-29.

The Board affirmed the Department's January 4, 2016 order. AR 3, 129 (CL 11). Young appealed, and the superior court also found violations in a de novo review of the Board's findings. CP 671-76. Young again appealed, and the Court of Appeals again affirmed. *Young v. Dep't of Lab. & Indus.*, No. 55859-9-II (Wash. Ct. App. July 12, 2022) (unpublished) (hereinafter "slip op."). The court noted that among the many errors raised by Young, some were unreviewable because of the failure to comply with RAP 10.3 by providing citation to authority. Slip op. 25-26.

Young now petitions this Court for review.

#### **IV. ARGUMENT**

No review is necessary in this case. The Department properly removed Young from its provider network when he



acted outside his prescribing authority by prescribing narcotics, resulting in the surrender of his DEA license and associated DOH restrictions. Young argues that review should be granted because the Court of Appeals' opinion is unpublished, that his case presents "unique" issues without existing case law, and that these issues are of substantial public interest for workers and their providers. Pet. 2, 6. But nothing about this case presents an issue of substantial public interest under RAP 13.4(b)(4) when appellate decisions are routinely unpublished, many statutes have no associated case law, and there is nothing unique about a party failing to comply with a regulatory mandate.

Young's petition merely reargues the merits of his case.

It does not warrant this Court's review.

**A. Revoking Provider Network Membership Is Appropriate when DEA Licensure Is Revoked**

Substantial evidence supports removal of Young from the provider network. Young argues that his provider network enrollment shouldn't have been revoked when he surrendered

his prescriber registration to the DEA. Pet. 28-29. The Court of Appeals properly found otherwise. Slip op. 19-20.

One of the minimum provider network standards under WAC 296-20-01030 involves DEA registration. WAC 296-20-01030(8) states:

The provider must have a current Drug Enforcement Administration (DEA) registration, if applicable to the provider's scope of licensure.

...

(b) The provider must not have surrendered, voluntarily or involuntarily his or her DEA registration in any state while under investigation or due to findings resulting from the provider's acts, omissions, or conduct.

Young is correct that, as a naturopath and chiropractor, he need not have a DEA registration to be part of the Department's provider network. But where he errs is in his supposition that the surrender of his DEA registration is irrelevant to the Department's determination of his provider network eligibility. Subsection (b)'s mandate that providers in the network have not surrendered a DEA registration while

under investigation applies to him even though he did not need the registration to be admitted to the network.

Nor was this the only evidence supporting the revocation. Young likewise fell afoul of WAC 296-20-01030(7)(a)'s minimum standard because his license was not free from restrictions, limitations, or conditions. AR Dodge 28; AR Floyd 32-33; AR Rogers 18-19; AR Figueroa 15-17; AR Franke 28. This was because DOH was monitoring him and he was restricted from applying for a DEA registration. AR Rogers 19; AR Floyd 33. Dr. Figueroa explained, "as a medical professional, when someone's being monitored, [their license is] not free of restrictions." AR Figueroa 41-42; *see also* AR Floyd 30.

Because this undisputed evidence supports the Department's revocation decision, for this reason alone, the Court should deny review.

**B. The Department Properly Considered Young's Reconsideration Request Within the Regulatory Timeframe**

Young argues that the Board erred by failing to find that the Department's order on reconsideration was untimely, and that because the order wasn't timely, the issues reached in that order were not before the Board or the superior court. Pet. 9-18, 20-21, 23, 26. The purpose of his argument is to contest the additional allegations about the surrender of his license to the DEA. Pet. 20-21.

WAC 296-20-01090(4) provides that motions for reconsideration in provider cases are to be considered within 90 days. This is directory in nature because the Department not meeting the deadline wouldn't invalidate any order. *See Spokane County ex rel. Sullivan v. Glover*, 2 Wn.2d 162, 169, 97 P.2d 628 (1940). In any event, Young is wrong that the decision wasn't reconsidered within the time limit.

Young claims that his request for reconsideration was sent on September 28, 2015, and therefore the Department's

January 4, 2016 order was filed more than 90 days later. Pet. 11-12. But Young's September 28 request for reconsideration related to the Department's August 2015 order. Exs 7-8. The Department's September 25, 2015 order superseded the August 2015 order. Ex 10. Young did not request reconsideration of the September 2015 order until October 7, 2015. Ex 11. The January 4, 2016 order was issued within 90 days of that date and therefore was timely.

The Court of Appeals correctly found that the Department timely considered Young's reconsideration motion. Slip op. 26. There is no basis for review.

**C. The Billing Audit Has No Preclusive Effect on the Medical Practices Action**

Young argues that a 2014 audit about billing precluded an investigation about his medical practices. Pet. 29-30. While the Department did an investigation into Young's billing practices in 2014, nothing about that investigation precluded the Department's DEA-related action at issue here. The May 2014 report on the Department's billing audit and investigation was

explicit that “medical necessity and quality of care provided to industrially ill or injured workers were not reviewed as part of this audit. . . . Because of the limited nature of the review, no implications as to the overall level of provider performance should be drawn solely from this report.” Slip op. 18. Nothing about the billing audit prevented an inquiry into violation of DEA requirements and other medical practice issues.

**D. The Legality of the Department’s Letter to Patients Is Not Before the Court**

The Department sent letters to patients notifying them of the order revoking Young’s ability to treat workers’ compensation patients. Young argues that the Department shouldn’t have sent the letter to Young’s patients about his removal from the provider network before a final decision on his case. Pet. 19. Without citing to authority, Young says the Court of Appeals’ ruling that the issue was not before the Court of Appeals is the “COA’s most egregious error.” Pet. 31.

RCW 51.36.010(9) provides:

When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

The Court of Appeals ruled that “DLI’s letters may have been improper. . . . [But] even if these letters were improper, Young does not explain why that fact affects the validity of the September 2015 order and notice or the January 2016 order.” Slip op. 37. This ruling is correct—the letters have no bearing on the merits of whether Young should have been removed from the provider network. And he has filed a separate tort action on this issue, which is presently pending before this Court on a procedural issue. *Young v. Dep’t of Lab. & Indus.*, No. 101452-0 (Wash. Jan. 9, 2023).

**E. Young’s Remaining Issues Also Do Not Warrant Review**

Young complains that he wanted four hours for his oral argument at the superior court, but only received 45 minutes.

Slip op. 27. Allowing 45 minutes of oral argument is well within the discretion of the trial court.

Young argues that the complete administrative record was not filed when the Board did not submit record “P0001” to the superior court. Pet. 26. This record was a separate administrative proceeding that wasn’t appealed. Slip op. 33-34. Only the record on the order on appeal is transmitted. *See* RCW 51.52.110.

Young raises issues related to the findings that he didn’t comply with minimum network standards. Pet. 24-25. The Court of Appeals didn’t address this argument because it affirmed on the basis of the failure to comply with his DEA registration and the DOH restrictions on his license. Slip op. 24. This presents no basis for review.

Young argues that doctors that weren’t his peers shouldn’t have been able to testify. Pet. 23-24. This goes to the issue of minimum network standards and so isn’t relevant to the issues presented for review. In any event, he presents no



authority that medical experts can't testify because of an assertion that they aren't peers.

Young argues about how the Board acted on the stay motion, claiming that the hearing was somehow in error. Pet. 22-23. But the Board's order on the stay motion didn't address the merits of the Department's order and is therefore irrelevant.

Young argues that creation of the provider network violates due process. Pet. 30-31. He provides no authority for this novel proposition. The Court of Appeals properly rejected the argument because “[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.” Slip op. 38-39 (alteration in original) (quoting *Crystal Ridge Homeowners Ass'n v. City of Bothell*, 182 Wn.2d 665, 679, 343 P.3d 746 (2015)).

None of Young's arguments show any reason for review.

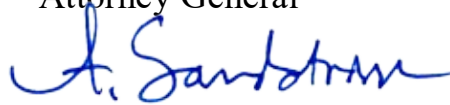
## **V. CONCLUSION**

The Department asks that this Court deny review.

This document contains 3,061 words, excluding the parts  
of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of  
January, 2023.

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The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served, Dept.'s Answer to Petition for Review and this Certificate of Service in the below described manner:


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