IN THE IOWA SUPREME COURT

NO. 20-0545

ROBERT F. COLWELL, JR., D.D.S.,
Plaintiff-Appellee

v.

MCNA INSURANCE COMPANY AND MANAGED CARE OF NORTH AMERICA, INC. d/b/a MCNA DENTAL AND MCNA DENTAL PLANS,
Defendants-Appellants

APPEAL FROM THE IOWA DISTRICT COURT FOR
POTTAWATTAMIE COUNTY
HON. JAMES HECKERMAN, JUDGE

FINAL BRIEF OF APPELLEE

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ROUTING STATEMENT

Pursuant to Iowa Rule of Appellate Procedure 6.1101, this matter should be retained by the Supreme Court. This appeal involves a substantial issue of first impression relating to the interpretation and application of Iowa Code section 249N.6. See Iowa R. App. P. 6.1101(2)(c). Additionally, the case presents a substantial question of enunciating legal principles relating to Iowa Code section 249N.6. See Iowa R. App. P. 6.1101(2)(f).

RESPONSE TO APPELLANTS' STATEMENT OF THE CASE

Appellee Robert F. Colwell, Jr., D.D.S. ("Colwell") disagrees with only one area of the Statement of Facts presented by Appellants MCNA Insurance Company and Managed Care of North America, Inc. d/b/a MCNA Dental and MCNA Dental Plans (collectively, "MCNA"). MCNA continues to misconstrue the issue in this case as whether it was "required to renew" its contract with Colwell. See MCNA's Brief, pp. 11-12, 14. Colwell's claims are and always have been whether MCNA breached its contract with Colwell and/or breached the covenant of good faith and fair dealing by terminating (or attempting to terminate) such contract. App. Vol. I, pp. 17-18 - Petition, Counts I and II. Similarly, MCNA incorrectly states that the Court's February 17, 2020 Findings of Fact and Conclusions of Law (hereinafter "Order") held that MCNA breached the contract when it "failed

to renew it for another term." See MCNA's Brief, pp. 13-14. The Court's Order actually held that MCNA's April 24, 2019 letter to Colwell, regardless of MCNA's attempt to characterize it as a nonrenewal, was a termination letter and such letter failed to comply with the applicable termination requirements. App. Vol. I, pp. 237-256 - Order, pp. 7-26.

STATEMENT OF THE FACTS

Colwell is licensed to practice dentistry in Iowa and Nebraska. App. Vol. I, p. 274 - Trial Tr. 6:11-12. He provides dental services under the entity name Robert F. Colwell, Jr., DDS, P.C. at three locations – Dream Dental in Council Bluffs, Iowa, Southroads Dental Center in Bellevue, Nebraska and Westwood Dental in Omaha, Nebraska. App. Vol. I, p. 273 - Trial Tr. 5:16-25. At all times material to these proceedings, Colwell has been an approved and enrolled provider in Iowa Medicaid. App. Vol. I, pp. 11, 225, 276 - Petition ¶ 18; Answer ¶ 18; Trial Tr. 8:9-14.

While Colwell is classified as a "general dentist" in MCNA's network, he testified regarding the specialized types of dental procedures he performs, many of which fall outside the Annual Benefit Maximums for coverage, and which are referred to him by other general dentists. App. Vol. I, pp. 296-297, 312-313, 321 - Trial Tr. 46:10-47:20, 93:4-94:12, 133:2-24. MCNA did not dispute that Colwell provided services in the specialty areas

of oral surgery, periodontics and endodontics, which are not typical services provided by other general dentists. App. Vol. I, p. 344 - Trial Tr. 169:5-11. Colwell also testified as to his additional training beyond dental school. Colwell completed a fellowship at Howard University with the American Academy of Implant Dentistry where he received advanced training in implant surgery and complex oral surgery, and he has a masters of conscious sedation from the American Dental Society of Anesthesiology. App. Vol. I, pp. 274-275 - Trial Tr. 6:18-7:14. MCNA's attempt to categorize Colwell the same as all other general dentists in the area is simply without merit.

In May 2013, the Iowa Legislature passed the Iowa Health and Wellness Plan, which provided for comprehensive dental benefits equivalent to the Medicaid benefit for individuals who had not previously met the Medicaid eligibility requirements. App. Vol. I, pp. 9, 224, 276-277 - Petition ¶ 6; Answer ¶ 6; Trial Tr. 8:23-9:14. The Iowa Health and Wellness Plan was codified at Iowa Code chapter 249N and such chapter governs the operation of that Plan. App. Vol. I, pp. 9, 224, 337-338 - Petition ¶ 6; Answer ¶ 6; Trial Tr. 159:24-160:7. For dental services, such plan became known as the "Dental Wellness Plan" and was effective May 1, 2014. App. Vol. I, pp. 9, 224, 278 - Petition ¶ 6; Answer ¶ 6; Trial Tr. 10:23-25; App. Vol. II, pp. 430-446 - Plaintiff's Exhibit 21. Under Iowa Code section

249N.3(2), the Iowa Health and Wellness Plan, including the Dental Wellness Plan, was established within the Medicaid program and was required to be administered by the Iowa Department of Human Services ("the Department"). App. Vol. I, pp. 9, 224 - Petition ¶ 7; Answer ¶ 7. Effective July 1, 2017, all adult Medicaid members (age 19 and older) were moved into the Dental Wellness Plan, and the Dental Wellness Plan became the single dental program for all adult Iowa Medicaid members, including those individuals who previously only met the eligibility requirements for the original Dental Wellness Plan. App. Vol. I, pp. 9, 224, 279 - Petition ¶ 9; Answer ¶ 9; Trial Tr. 11:6-10; App. Vol. II, pp. 430-446 - Plaintiff's Exhibit 21.

On July 12, 2016, the Department announced that MCNA would be joining as a contractor for the Dental Wellness Plan, which previously had Delta Dental of Iowa as its only contractor. App. Vol. I, pp. 9, 224 - Petition ¶ 8; Answer ¶ 8. At all times material, MCNA has had a contract with the Department to provide dental benefits to all Medicaid enrollees aged 19 and over that are assigned to MCNA. App. Vol. I, pp. 9-10, 224 - Petition ¶ 10; Answer ¶ 10; App. Vol. II, pp. 194-386 - Plaintiff's Exhibits 6 and 7 (providing most recent contract between MCNA and the Department, which is referred to as the "State Contract").

Effective June 21, 2016, MCNA contracted with Colwell through a Master Dental Provider Agreement. App. Vol. I, pp. 10, 224 - Petition ¶ 11; Answer ¶ 11; App. Vol. II, pp. 8-24 - Plaintiff's Exhibit 1.[1] As a result of the Master Dental Provider Agreement with MCNA, Colwell provides dental services to members assigned to MCNA under the Dental Wellness Plan at both his Council Bluffs and Bellevue offices. App. Vol. pp. 10, 224 - Petition ¶¶ 12, 14; Answer ¶¶ 12, 14; App. Vol. II, pp. 8-24 - Plaintiff's Exhibit 1. Since January 1, 2012, Colwell's office in Council Bluffs has seen over 3,951 patients and a total of 17,122 office visits by Medicaid patients, which includes members covered by MCNA. App. Vol. II, pp. 623-625 - Plaintiff's Exhibit 34; App. Vol. I, pp. 308-310 - Trial Tr. 76:16-78:11. Colwell estimated that he had approximately 1,000 patients who were members of MCNA. App. Vol. I, pp. 316 - Trial Tr. 108:4-9. The Master Dental Provider Agreement between Colwell and MCNA incorporates and makes the Provider Manual a part of the Agreement. App. Vol. I, pp. 10, 17, 224, 227 - Petition ¶¶ 13, 48; Answer ¶¶ 13, 48; App. Vol.

[1] Despite MCNA's admission of this exact statement in its Answer, MCNA's Executive Vice President Shannon Turner ("Ms. Turner") testified at trial that there was a different effective date on the Master Dental Provider Agreement and that a counter-signed version stating this other effective date existed. App. Vol. I, pp. 372-373 - Trial Tr. 209:20-210:7. Like many other statements by Ms. Turner, this was not supported by any documentary evidence, even though it could have been easily supplied by MCNA if it existed. App. Vol. I, pp. 373-374 - Trial Tr. 210:8-10, 211:2-6.

II, pp. 10, 25-189 - Plaintiff's Exhibit 1, Art. II, ¶ 2; Plaintiff's Exhibit 2. The Master Dental Provider Agreement also incorporates, among other things, the State Contract, state law and federal law. App. Vol. I, pp. 10-11, 17, 225, 227 - Petition ¶¶ 15, 48; Answer ¶¶ 15, 48; App. II, p. 14 - Plaintiff's Exhibit 1, Art. IV, ¶ 1. In addition, the Master Dental Provider Agreement, like all contracts, contains an implied covenant of good faith and fair dealing. App. Vol. I, pp. 18, 228 - Petition ¶ 54; Answer ¶ 54.

On April 24, 2019, MCNA issued a letter to Colwell stating, in part, the following:

> Pursuant to Article X, Term and Termination, of the MCNA Master Dental Provider Agreement and the Iowa Dental Wellness Plan Product Attachment, effective August 5, 2016 for all of your practice locations, MCNA is providing notice of non-renewal of this Agreement. Your participation with MCNA will end at midnight on August 4, 2019, as a participating Dental Wellness Plan provider.

App. Vol. I, pp. 12, 226 - Petition ¶ 24; Answer ¶ 24; App. Vol. II, p. 191 - Plaintiff's Exhibit 4. On May 10, 2019, Colwell, through his counsel, sent a letter to MCNA in response to the April 24, 2019 letter. App. Vol. I, pp. 13, 226 - Petition ¶ 27; Answer ¶ 27; App. Vol. II, pp. 192-193 - Plaintiff's Exhibit 5. The May 10, 2019 letter requested good faith negotiations with MCNA in accordance with Article IX of the Master Dental Provider Agreement. App. Vol. II, pp. 8-24, 192-193 - Plaintiff's Exhibit 5;

Plaintiff's Exhibit 1. Under such provision, if the matter is not resolved within sixty (60) days of the request, either party may initiate litigation. App. Vol. I, pp. 13, 226 - Petition ¶ 28; Answer ¶ 28; App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. IX. MCNA did not engage in any good faith negotiations after receiving the May 10, 2019 letter from Colwell's counsel. App. Vol. I, p. 287 - Trial Tr. 37:19-25. MCNA issued letters to Colwell's patients who are MCNA members covered by the Dental Wellness Plan indicating that he would no longer be an approved provider effective August 4, 2019. App. Vol. I, pp. 13, 226 - Petition ¶ 31; Answer ¶ 31. As a result of the District Court's temporary injunction entered on July 29, 2019 and a subsequent order dated August 7, 2019, a second letter was sent by MCNA to these members advising them that Colwell would continue to be a participating provider until further notice. App. Vol. I, pp. 219-223 - July 29, 2019 Temporary Injunction; August 7, 2019 Order; App. Vol. III, p. 15 - Defendants' Exhibit G.

In 2019, Colwell filed a small claims action against MCNA in Sarpy County, Nebraska that was later dismissed without prejudice. App. Vol. I, pp. 14, 226 - Petition ¶ 34; Answer ¶ 34. Colwell also filed a complaint against MCNA in Douglas County, Nebraska alleging breach of the Master Dental Provider Agreement, fraud and tortious interference with business

relations as to Colwell's services provided under Nebraska's Children's Health Insurance Program and Nebraska Medicaid. App. Vol. I, pp. 14, 226 - Petition ¶ 34; Answer ¶ 34. These actions were filed shortly before Colwell received the April 24, 2019 letter from MCNA. App. Vol. II, p. 191 - Plaintiff's Exhibit 4. Colwell has also zealously advocated for enrollees who are his patients with regard to MCNA and its coverage and/or prior approval of certain services. App. Vol. I, pp. 14, 226 - Petition ¶ 36; Answer ¶ 36; App. Vol. III, pp. 8-10 - Defendants' Exhibit D. According to MCNA's own records, Colwell or another dentist in his office[2] filed nine appeals between July 1, 2018 and June 30, 2019. App. Vol. III, pp. 8-10 - Defendants' Exhibit D. Although one office (the University of Iowa) filed one more appeal than Colwell or his associates, Colwell was more successful than any other provider during this time period in that his nine appeals resulted in five complete reversals of MCNA's claim denial and two partially overturned MCNA claim denials. App. Vol. III, pp. 8-10 - Defendants' Exhibit D; App. Vol. I, p. 378 - Trial Tr. 216:3-13. Colwell testified that he has had to file more appeals for coverage since MCNA and Delta Dental have administered the Dental Wellness Plan than he did in the

[2] Colwell testified that even if another dentist in his office was the listed provider, he handled the appeals or challenges of denial decisions. App. Vol. I, pp. 411-412 - Trial Tr. 269:24-270:10.

approximately nineteen (19) years that Iowa Medicaid Enterprise administered Medicaid's dental coverage. App. Vol. I, p. 304 - Trial Tr. 57:13-24.

MCNA asserts as a "fact" that Colwell utilized an "inordinate amount of [MCNA] staff time". See MCNA's Brief, pp. 18-19. The allegations regarding Colwell's "ongoing problems" with MCNA as a basis for terminating (or in MCNA's words, "not renewing") the Master Dental Provider Agreement grew over time as MCNA felt it needed to provide some justification for its breach. Initially, no reason was given for its decision to terminate the Master Dental Provider Agreement. See App. Vol. II, p. 191 - Plaintiff's Exhibit 4. After Colwell filed his Petition and requested a temporary injunction, MCNA asserted that its decision to remove Colwell as a provider was a "business decision to eliminate additional administrative cost and personnel time" that Colwell imposed. App. Vol. II, p. 629 - Plaintiff's Exhibit 45, at ¶ 28. By the time of trial, Ms. Turner was claiming that Colwell took up an "inordinate" amount of staff time working through claims issues, that his office spent two and three hours (which later became four hours) on the phone with MCNA staff, and that he caused a staff person to cry. App. Vol. I, pp. 355-358, 360-361 - Trial Tr. 190:2-24, 191:16-19, 192:15-193:14, 195:16-196:2. Ms. Turner claimed

there were recordings of these interactions as well as records in a program called “Dental Track” that would contain a log of the communications. App. Vol. I, pp. 355-356 - Trial Tr. 190:20-191:13. However, MCNA could not produce any such information and could not identify or compare Colwell to other providers in terms of the level of time that his office was involved with MCNA staff. App. Vol. I, pp. 355-357, 361-362 - Trial Tr. 190:25-191:2; 191:11-20, 192:3-7, 196:3-7, 196:25-197:3. Ms. Turner was also not a participant in any of these alleged communications, and she did not know what occurred, who was present or what happened. App. Vol. I, p. 360 - Trial Tr. 195:4-9, 18-19. Colwell denied the existence of the communications as described by Ms. Turner and testified that his only communications with MCNA related to working through claims, handling appeals of MCNA denials and/or the pursuit of state fair hearings. App. Vol. I, pp. 359, 409-411 - Trial Tr. 194:23-25, 267:12-268:15, 269:2-8. The only “administrative tasks” Colwell engaged in with MCNA were the filing of claims, requesting explanations on claim determinations, filing appeals, requesting expedited resolutions, asking for peer-to-peer calls (which never actually occurred) and filing the actions in Nebraska. App. Vol. I, pp. 289, 298-300, 302-304, 410-411 - Trial Tr. 39:11-14, 49:9-23, 50:20-21, 51:12-15, 55:6-56:17, 57:1-12, 268:16-269:2. No one from MCNA ever advised

Colwell of these alleged issues or issued a warning that he needed to correct these behaviors, which further supports the Court's finding of fact that this was an excuse used by MCNA to eliminate a provider that often advocated (successfully) for claim payment reversals for clients, who sued MCNA for unpaid claims and who provided services to patients that were outside of the Annual Benefit Maximum. App. Vol. I, pp. 252, 289, 295-302, 344, 362, 407-408 – Order, p. 22; Trial Tr. 39:11-14, 45:9-47:20, 49:9-23, 50:20-21, 51:12-15, 54:23-55:5, 169:5-11, 197:4-12, 265:25-266:2; App. Vol. III, pp. 8-10 - Defendant's Exhibit D.

MCNA also misstates the testimony of Colwell in claiming he admitted that his office "struggled with many issues." See MCNA's Brief, pp. 18-19. The question being answered by Colwell was whether he or his office sometimes called MCNA with "claims issues", to which Colwell answered "yes." App. Vol. I, pp. 302-303 - Trial Tr. 55:25-56:2. Then, when asked whether this was different than any insurance company he files claims with he said "[w]e have substantially more issues [referring to MCNA and Delta Dental as the Iowa Health and Wellness Plan managed care organizations] but, no, not any different than we would with normal insurance companies." App. Vol. I, p. 303 - Trial Tr. 56:3-11. Colwell

clearly did not admit to the unsupported allegations made by Ms. Turner or that he "struggled" with "many issues".

In its Statement of Facts, MCNA also misconstrues and ignores significant information about the adequacy of its network and its alleged basis for "not renewing" the Master Dental Provider Agreement. See MCNA's Brief, pp. 18-19. Notably, MCNA never asserted in its April 24, 2019 letter or at any time thereafter (until sued by Colwell) that Colwell's services were not necessary to meet the needs of its members. App. Vol. II, p. 191 - Plaintiff's Exhibit 4; App. Vol. I, pp. 321-322 - Trial Tr. 133:25-134:9. At the same time that MCNA was allegedly determining that it no longer needed Colwell's services – despite the fact that they needed him at the time of the Master Dental Provider Agreement and he had provided extensive services to its members – the Department was in communications with MCNA about the need for MCNA to strengthen its network across the state. App. Vol. I, pp. 340-343 - Trial Tr. 165:10-168:21; App. Vol. II, pp. 387-392 - Plaintiff's Exhibit 17; Plaintiff's Exhibit 18. Furthermore, the majority of the grievances regarding MCNA in 2018 and 2019 were categorized as "provider not in network", "lack of providers in network" or "access to care/network adequacy." App. Vol. II, pp. 608-622 - Plaintiff's Exhibits 30 through 33; App. Vol. I, pp. 346-351 - Trial Tr. 171:15-176:18.

MCNA also relies upon Colwell's Exhibit 24 to claim that there are 103 "search results" for general dentists in Pottawattamie County. See MCNA's Brief, p. 18. However, a closer look at those search results shows that there are only approximately 50 dentists on the list once duplicates are eliminated. App. Vol. II, pp. 564-589 - Plaintiff's Exhibit 24.

Additional facts regarding provisions of the State Contract and the Master Dental Provider Agreement will be set forth in the relevant Argument sections below.

ARGUMENT

I. THE DISTRICT COURT DID NOT ERR IN HOLDING THAT MCNA COULD ONLY TERMINATE, RATHER THAN NOT RENEW, THE MASTER DENTAL PROVIDER AGREEMENT WITH COLWELL.

A. Preservation of Error, Scope of Review and Standard of Review.

Colwell agrees with MCNA's assertion that error has been preserved on the issue of interpretation of the terms of the Master Dental Provider Agreement. See MCNA's Brief, Argument § V. While MCNA's statements regarding the scope and standard of review are not wholly incorrect, they are incomplete. See MCNA's Brief, p. 49.

An action for breach of contract is reviewed for errors at law. Kurt v. Reams, 683 N.W.2d 127, *2 (Iowa Ct. App. 2004) (citing Land O'Lakes,

Inc. v. Hanig, 610 N.W.2d 518, 522 (Iowa 2000)). The District Court's findings of fact, as set forth in the February 17, 2020 Order, "have the effect of a special verdict and are binding if supported by substantial evidence." Id. (citing Land O'Lakes, Inc., 610 N.W.2d at 522); see also Poole v. Hawkeye Area Community Action Program, Inc., 666 N.W.2d 560, 565 (Iowa 2003) (holding that the findings of fact of a district court bench trial are to be affirmed if supported by substantial evidence). Substantial evidence is evidence that a "reasonable mind would accept…as adequate to reach a legal conclusion" and such evidence must be viewed in "a light most favorable to" the judgment of the District Court. Kurt, 683 N.W.2d at *2 (citing Land O'Lakes, Inc., 610 N.W.2d at 522). If the District Court's findings '"are ambiguous, they will be construed to uphold, not defeat, the judgment."' Hodges v. Boline, 746 N.W.2d 280, *1 (Iowa Ct. App. 2008) (quoting Chrysler Financial Co. v. Bergstrom, 703 N.W.2d 415, 419 (Iowa 2005)). The District Court's legal conclusions and application of legal principles are not binding on this Court, but this Court is only to reverse if it concludes that the District Court "erroneously applied rules of law that materially affected its decision." Kurt, 683 N.W.2d at *2 (citing Land O'Lakes, 610 N.W.2d at 522).

B. The District Court Correctly Held That There is No "Nonrenewal" Option in the Master Dental Provider Agreement.

MCNA's assertion that it did not breach the Master Dental Provider Agreement hinges on its contention that it was at liberty to not renew such contract rather than follow the termination requirements. See MCNA's Brief, pp. 49-56. The District Court disagreed with MCNA's assertions and held that the Master Dental Provider Agreement did not provide for nonrenewal and that MCNA's own actions and statements belied such analysis. App. Vol. I, p. 241 - Order, p. 11. The provision at issue in the Master Dental Provider Agreement states as follows:

> **Term.** This Agreement shall have an initial term of one (1) year commencing on the Effective Date [June 21, 2016]. Thereafter, this Agreement shall automatically renew for terms of one (1) year each. Notwithstanding the foregoing, this Agreement may terminate in accordance with the Termination sections below.

App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. X, ¶ 1, p. 12. The Master Dental Provider Agreement then provides that it may be terminated under any of the specified circumstances listed in Article X, paragraph 2. App. Vol. II, pp. 19-20 - Plaintiff's Exhibit 1, Art. X, ¶ 2, pp. 12-13.

The Iowa Supreme Court has described the analysis of contractual language as follows:

[Contract] [i]nterpretation is the process for determining the meaning of words used by the parties in a contract. Interpretation of a contract is a legal issue unless the interpretation of a contract depends on extrinsic evidence. On the other hand, construction of a contract is the process a court uses to determine the legal effects of the words.

The cardinal rule of contract interpretation is to determine what the intent of the parties was at the time they entered into the contract. "Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." Another relevant rule of contract interpretation requires that "[w]herever reasonable, the manifestations of intention of the parties to a promise or agreement are interpreted as consistent with each other and with any relevant course of performance, course of dealing, or usage of trade."

These rules of interpretation are general in character and only serve as guides in the process of interpretation. The rules do not depend upon a determination that there is an ambiguity, but we use them to determine "what meanings are reasonably possible as well in choosing among possible meanings."

Long ago we abandoned the rule that extrinsic evidence cannot change the plain meaning of a contract. We now recognize the rule in the Restatement (Second) of Contracts that states the meaning of a contract "can almost never been plain except in a context." Accordingly,

> "[a]ny determination of meaning or ambiguity should only be made in the light of relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. *But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention.*"

> In other words, although we allow extrinsic evidence to aid in the process of interpretation, the words of the agreement are still the most important evidence of the party's intentions at the time they entered into the contract. When the interpretation of a contract depends upon the credibility of extrinsic evidence or on a choice among reasonable inferences that can be drawn from the extrinsic evidence, the question of interpretation is determined by the finder of fact.

Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430, 435-36 (Iowa 2008) (citing Fashion Fabrics of Iowa, Inc. v. Retail Investors Corp., 266 N.W.2d 22, 25 (Iowa 1978); citing Walsh v. Nelson, 622 N.W.2d 499, 503 (Iowa 2001); citing Hamilton v. Wosepka, 261 Iowa 299, 313, 154 N.W.2d 164, 171-72 (1967); quoting Fausel v. JRJ Enterprises, Inc., 603 N.W.2d 612, 618 (Iowa 1999); quoting Restatement (Second) of Contracts, §§ 202(1), 202(5), 202 cmt. a, 212 cmt. b (1979)). Here, the words and the extrinsic evidence relied upon by the Court, as well as the Court's legal analysis, appropriately held that MCNA could only terminate, rather than "not renew" the Master Dental Provider Agreement. App. Vol. I, pp. 237-241 - Order, pp. 7-11.

The plain reading of the provision at issue is that the Master Dental Provider Agreement only ends if there is a termination under Article X, paragraph 2. App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. X, ¶ 1, p. 12. Otherwise, the Master Dental Provider Agreement automatically renews each year for another year. App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. X,

¶ 1, p. 12. MCNA's own witness admitted that there is no language in the Master Dental Provider Agreement that specifically allows for nonrenewal and that this alleged right could only be "implied." App. Vol. I, pp. 368-369 - Trial Tr. 205:25-206:23. An implied and self-serving reading of this provision does not outweigh the clear language of Article X. See Fashion Fabrics of Iowa, Inc., 266 N.W.2d at 28 (holding that implied covenants cannot be found when a contract is fully integrated); App. Vol. II, p. 22 - Plaintiff's Exhibit 1, Art. XI, ¶ 8, p. 15 (providing integration clause).

In a new argument, MCNA asserts that the heading of Article X "Term and Termination" supports its argument for nonrenewal, because the heading "contemplated" two concepts – a specific duration or term and termination requirements. See MCNA's Brief, p. 52. This argument is without merit in that it attempts to elevate a paragraph label or title above the actual language utilized in the provision itself. The Master Dental Provider Agreement prohibits MCNA from relying upon the heading to change or limit the provision at issue: "**Headings/Recitals.** The headings of the sections of this Agreement are inserted merely for the purpose of convenience and *do not, expressly or by implication, limit, define, or extend the specific terms of the section so designated*. The Recitals are incorporated into this Agreement." App. Vol. II, p. 21 - Plaintiff's Exhibit 1, Art. XI, ¶ 4

(emphasis added). Even if the heading did have any weight in interpreting the provision at issue, it does not support MCNA's argument. There is a contract term – one year plus an endless number of automatic one-year renewals – and a termination provision. App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. X, ¶ 1, p. 12. Simply because MCNA does not like the term length for purpose of its relationship with Colwell does not change the language of the Master Dental Provider Agreement.

As found by the District Court, the extrinsic evidence of MCNA's actions in attempting to end the Master Dental Provider Agreement further support this plain reading. App. Vol. I, pp. 240-241 - Order, pp. 10-11. MCNA's April 24, 2019 letter to Colwell refers to the entirety of Article X of the Master Dental Provider Agreement, not just paragraph 1. App. Vol. II, p. 191 - Plaintiff's Exhibit 4. Furthermore, the letter uses the word "termination" *four* times and instructs Colwell as to his obligations under the Agreement, federal law and state law with regard to continuing to provide services to its members until the "Termination Effective Date," until completion of the member's course of treatment or until such time that the patient can be transitioned. App. Vol. II, p 191 - Plaintiff's Exhibit 4; App. Vol. I, p. 332 - Trial Tr. 151:4-18; see also App. Vol. II, p. 20 - Plaintiff's Exhibit 1, Art. X, ¶ 3 (describing the same rights and obligations upon

termination as set forth in the letter). MCNA also sent letters to patients advising them of Colwell's end date, an action that is only required upon termination. App. Vol. II, p. 20 - Plaintiff's Exhibit 1, Art. X, ¶ 4; App. Vol. I, pp. 281-282 - Trial Tr. 31:23-32:17.

As the District Court also found, the fact that the Provider Manual does not address nonrenewal further supports that this is not a valid option under the Master Dental Provider Agreement. App. Vol. I, p. 257 - Order, p. 27. MCNA's argument that there is nothing in the contract or the Provider Manual that *prohibits* it from not renewing the Master Dental Provider Agreement turns the concept of contract interpretation on its head by relying upon the lack of prohibitive language rather than the language used in the contract. See MCNA's Brief, pp. 52-53; see Pillsbury Co., Inc., 752 N.W.2d at 435-36. The Provider Manual, which is incorporated into and makes up "one integrated contract" with the Master Dental Provider Agreement, provides an even more restricted and specific list of reasons for termination. App. Vol. II, pp. 10, 53 - Plaintiff's Exhibit 1, Art. II, ¶ 2, p. 3; Plaintiff's Exhibit 2, p. 29. Because the Provider Manual provides more specific reasons than the Master Dental Provider Agreement, the Provider Manual provisions are controlling. See Iowa Fuel & Minerals, Inc. v. Iowa State Board of Regents, 471 N.W.2d 859, 863 (Iowa 1991) ("A second principle

of construction applicable here provides that when a contract contains both general and specific provisions on a particular issue, the specific provisions are controlling.") (citing Mopper v. Circle Key Life Insurance Co., 172 N.W.2d 118, 126 (Iowa 1969); Schlosser v. Van Dusseldorp, 251 Iowa 521, 526, 101 N.W.2d 715, 718 (1960)). The Provider Manual includes in the causes for termination things such as misrepresentation on the credentialing application, failure to meet participating criteria, failure to provide requested dental records and failure to maintain professional liability coverage. App. Vol. II, p. 53 - Plaintiff's Exhibit 2, p. 29. None of these reasons apply to Colwell, and the reasons given by MCNA (a business decision to eliminate administrative cost and personnel time related to Colwell) is not an identified basis for termination under the Master Dental Provider Agreement or any applicable law.

The District Court's interpretation of Article X is also supported by the common definitions of "nonrenewal" and "termination". See Harrington v. University of Northern Iowa, 726 N.W.2d 363, 368 (Iowa 2007) ("In searching for the meaning of contractual terms, we often resort to the dictionary to ascertain a term's common meaning."). Nonrenewal is "[a] failure to renew something, such as a lease or an insurance policy." Black's Law Dictionary, p. 1220 (10th ed. 2014). Here, the Master Dental Provider

Agreement states, on its face, that it is *automatically* renewable. App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. X, ¶ 1. There cannot be a "failure to renew" when no further action is necessary to renew the Agreement. On the other hand, termination is "to put an end to; to bring to an end." Id. at p. 1700. That is exactly what MCNA's April 24, 2019 letter did – it advised Colwell that MCNA was ending – in other words, terminating – the Master Dental Provider Agreement as of August 4, 2019. App. Vol. II, p. 191 - Plaintiff's Exhibit 4.

In its Brief, MCNA cites to Beal v. I.G.F. Insurance Co., 662 N.W.2d 373 (Iowa Ct. App. 2003) in support of its nonrenewal argument. See MCNA's Brief, p. 50. The District Court, however, appropriately recognized the distinction between the contract provision at issue in that case as compared with the Master Dental Provider Agreement at issue here. App. Vol. I, p. 238 - Order, p. 8. In Beal, the provision at issue included the following language: "…this Agreement shall automatically be extended without further action of either party for one year periods *unless, not later than six months prior to the end of the effective term,* either Company or the Employee *shall have given written notice that such party does not intend to extend this Agreement.*" Beal, 662 N.W.2d at *1 (emphasis added). Similar language does not exist here and according to MCNA's Executive Vice

President, would have to be "implied" to support MCNA's position. App. Vol. I, p. 369 - Trial Tr. 206:6-12.

The District Court's reading of the Master Dental Provider Agreement is also supported by a 1994 decision of the Iowa Supreme Court. See Martin v. Waterloo Community School District, 518 N.W.2d 381 (Iowa 1994). In Martin v. Waterloo Community School District, the Court addressed a statute in effect at the time of Martin's claim and an amendment to such statute in assessing whether the school board's action constituted a nonrenewal or a termination. Id. at 382-83. The two statutory provisions were as follows:

> An administrator's contract shall remain in force and effect for the period stated in the contract. *The contract shall be automatically continued in force and effect for one year beyond the end of its term*, except as modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as hereinafter provided. Iowa Code § 279.24 (1991) (emphasis added).
>
> An administrator's contract shall remain in force and effect for the period stated in the contract. The contract *shall be automatically continued in force and effect for additional one-year periods beyond the end of its original term*, except and until the contract is modified or terminated by mutual agreement of the board of directors and the administrator, or until terminated as provided by this section. Iowa Code § 279.24 (1993) (emphasis added).

The Supreme Court held that under the 1991 version of the statute, which was in effect at the time of the board's actions, the school board could "not

renew" Martin's contract after the "one year beyond term" period and avoid the termination requirements and procedures. Martin, 518 N.W.2d at 383. The Court further held that if the 1993 version of the statute had been in effect, the school board would have had to continue the contract every year unless it reached a mutual agreement with Martin to do otherwise or unless it followed the termination procedures and requirements. Id. The 1991 version of the statute had a specific end date – the end of the period stated in the contract plus one year of automatic renewal – which the school could allow to expire. See id. In contrast, the 1993 version of the statute, which allowed for an endless number of successive one-year automatic renewals, did not have an end date and thus, could only be terminated. See id. at 382-83. The provision of the Master Dental Provider Agreement at issue here is similar to the 1993 version of the statute at issue in Martin and therefore, should be interpreted and applied similarly. Compare App. Vol. II, p. 19 - Plaintiff's Exhibit 1, Art. X, ¶ 1, p. 12 with Iowa Code § 279.24 (1993). As the Court held in Martin with respect to the 1993 version of the statute, Article X of the Master Dental Provider Agreement automatically renews for an endless number of one-year terms and can only be terminated under the termination provision of the Master Dental Provider Agreement. See Martin, 518 N.W.2d at 382-83. If MCNA could simply "not renew" in any

given year, there is no automatic renewal and the District Court would have had to ignore the clear language of the contract.

MCNA attempts to support its strained interpretation of the Master Dental Provider Agreement with a public policy argument by asserting that the District Court's interpretation "handcuffs" it to "duplicative providers" causes it to "potentially incur unnecessary costs" and by asserting that its interpretation would "uphold the goal of managed care." See MCNA's Brief, pp. 53-54. MCNA submitted no evidence of any such duplicity or unnecessary costs at trial. It is also unclear how having multiple providers – even if they provided the same types of services – causes MCNA's unnecessary costs. MCNA pays claims for services actually provided to its members and would not reimburse providers for providing the same service that another provider already provided. App. Vol. II, pp. 346-347 - Plaintiff's Exhibit 6, Section 4 §§ 438.210(a)(4), 438.210(a)(5) (discussing limits on services and medical necessity requirements). MCNA does not pay a provider solely for entering a contract with MCNA.

It would also be inappropriate for this Court to invalidate the automatically renewable language on these weak, alleged public policy grounds. See Thomas v. Progressive Casualty Insurance Co., 749 N.W.2d 678, 687 (Iowa 2008) (holding that the power to invalidate a contract on

public policy grounds "must be used cautiously and exercised only in cases free from doubt") (citations omitted). In order to invalidate a contract on public policy grounds, "it must be shown that preservation of the general public welfare outweighs the weighty societal interest in the freedom of contract." Walker v. Gribble, 689 N.W.2d 104, 110 (Iowa 2004) (citations omitted). There is no such showing here and enforcing Article X of the Master Dental Provider Agreement is not so "injurious to the public or contrary to the public good" that its clear terms should be ignored or invalidated. See Thomas, 749 N.W.2d at 687 (citations omitted).

The District Court correctly relied upon the language of the Master Dental Provider Agreement, the available extrinsic evidence and Iowa law to support its holding that there was no ability for MCNA to "not renew" is contract with Colwell and thus, MCNA was required to follow the termination provisions. App. Vol. I, pp. 237-241 - Order, pp. 7-11. This finding is supported by substantial evidence and is not affected by an error of law and should be affirmed.

II. THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE DISTRICT COURT'S FINDING THAT MCNA BREACHED THE MASTER DENTAL PROVIDER AGREEMENT.

A. Preservation of Error, Scope of Review and Standard of Review.

Colwell agrees with MCNA's assertion that error has been preserved on the issue of interpretation of the terms of the Master Dental Provider Agreement. See MCNA's Brief, Argument § VI. MCNA's statements regarding the scope and standard of review are incomplete, though not incorrect. See MCNA's Brief, p. 56.

As set forth above, an action for breach of contract is reviewed for errors at law. Kurt, 683 N.W.2d at *2 (citing Land O'Lakes, Inc., 610 N.W.2d at 522). The District Court's findings of fact are binding if supported by substantial evidence. Id. (citing Land O'Lakes, Inc., 610 N.W.2d at 522); see also Poole, 666 N.W.2d at 565. Any ambiguous findings are construed to uphold, not defeat, the judgment. Hodges, 746 N.W.2d at *1. The District Court's legal conclusions and application of legal principles are not binding on this Court, but this Court is only to reverse if it concludes that the District Court "erroneously applied rules of law that materially affected its decision." Kurt, 683 N.W.2d at *2 (citing Land O'Lakes, 610 N.W.2d at 522).

B. The District Court Correctly Held That Colwell Met the Requirements for Establishing His Claim for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing.

In Count I of his Petition, Colwell asserted a claim for breach of contract against MCNA. App. Vol. I, pp. 17-18 - Petition, Count I. To

prove such a claim, Colwell must show the existence of a contract and that he fully performed the terms and conditions of such contract. Berryhill v. Hatt, 428 N.W.2d 647, 652 (Iowa 1988). Additionally, Colwell must show that MCNA breached such contract. Id. MCNA did not dispute the existence of a contract - the Master Dental Provider Agreement along with the law and documents it incorporates – nor did it claim that Colwell failed to perform any term or condition. App. Vol. I, pp. 10, 17, 224, 227 - Petition ¶¶ 11-13, 48; Answer ¶¶ 11-13, 48. Accordingly, the only issue that the District Court addressed was whether MCNA breached such contract. The Court appropriately held that MCNA's April 24, 2019 letter, which attempted to terminate the Master Dental Provider Agreement with Colwell, was a breach of such contract. App. Vol. I, pp. 237-258 - Order, pp. 7-28.

The second Count of Colwell's Petition asserted a claim for breach of the covenant of good faith and fair dealing. App. Vol. I, p. 18 - Petition, Count II. Under Iowa law, all contracts contain an implied covenant of good faith and fair dealing. Engstrom v. State, 461 N.W.2d 309, 314 (Iowa 1990). A party breaches such covenant when it acts in a manner that is offensive to community standards of decency, fairness and reasonableness. Kooyman v. Farm Bureau Mutual Insurance Co., 315 N.W.2d 30, 34 (Iowa 1982). Based upon the District Court's findings of fact and legal analysis, it correctly held

that MCNA also breached the implied covenant of good faith and faith dealing when it attempted to terminate its Master Dental Provider Agreement with Colwell. App. Vol. I, pp. 237-258 - Order, pp. 7-28.

Once the District Court correctly found that MCNA could only end its Master Dental Provider Agreement by terminating, it had to assess whether the April 24, 2019 letter followed the applicable termination requirements. App. Vol. I, p. 241 - Order, p. 11. These termination requirements and any limits on the method or basis for termination arise from the Master Dental Provider Agreement and the documents that it incorporates – the Provider Manual, the State Contract, state law and federal law. App. Vol. I, pp. 17, 227 - Petition ¶ 48; Answer ¶ 48 (providing admission from MCNA that the Master Dental Provider Agreement incorporates these documents); App. Vol. I, p. 326 - Trial Tr. 140:13-17 (agreeing that MCNA must comply with federal and state law with regard to its operations in Iowa).

The Master Dental Provider Agreement does contain a provision that allows either party to terminate upon ninety (90) days' written notice. App. Vol. II, pp. 19-20 - Plaintiff's Exhibit 1, Art. X ¶ 2(A). However, MCNA admitted that it was not relying upon this provision in attempting to end its relationship with Colwell. App. Vol. I, pp. 370-371 - Trial Tr. 207:9-18, 208-1-15. Even if MCNA were to rely upon such provision, the provision is

not enforceable and must be severed from the Master Dental Provider Agreement, because it violates state law and/or federal law and/or is inconsistent with the Provider Manual. App. Vol. II, p. 22 - Plaintiff's Exhibit 1, Art. XI ¶ 9 (providing severability provision); see Argument §§ I.B (addressing Provider Manual), III.B (addressing state law) and IV.B and IV.C (addressing federal law).

C. The District Court Correctly Held That MCNA's Alleged Reasons for Termination Were Nothing More Than a Flawed Pretext Unsupported by the Law and Evidence.

In its argument that it did not breach the Master Dental Provider Agreement, MCNA asserts that the Court "incorrectly found that the notice [to Colwell] was required to state that Colwell's participation was unnecessary to meet network adequacy." See MCNA's Brief, pp. 56-57. MCNA does not provide a cite to the Order, and the Court's Order does not make this finding. Rather, the Court held that "MCNA attempted to justify its action by arguing it already had more providers than necessary" and then held that this was a "flawed pretext" unsupported by the law and the evidence. App. Vol. I, p. 253 - Order, p. 23. In short, the issue of network adequacy as a basis for termination was raised by MCNA and addressed by the Court, but the Court did not base its finding for breach on the sole fact that this reasoning was not stated in the April 24, 2019 letter. Instead, the

Court found that MCNA's failure to mention this in its April 24, 2019 letter constituted evidence of it being nothing more than pre-text for its actions. App. Vol. I, p. 253 - Order, p. 23.

There is no dispute that the State Contract, which is reflective of federal law obligations, requires MCNA to maintain and monitor a network of appropriate providers and that such State Contract also establishes certain measurements for ensuring the adequacy of the network. App. Vol. I, pp. 15, 227 - Petition ¶ 38; Answer ¶ 38; App. Vol. II, pp. 221-222 - Plaintiff's Exhibit 6, § E.1. MCNA argued at the trial and continues to argue that its network meets sufficient standards. See MCNA's Brief, Argument § III. MCNA's alleged facts to support network adequacy were not accepted by the District Court. The District Court found that the evidence did not support MCNA's allegation that its network was adequate. App. Vol. I, pp. 252-253 - Order, pp. 22-23. This finding is supported by substantial evidence. The fact that MCNA chose to contract with Colwell in the first place indicated that he fulfilled a need for MCNA enrollees, and because he has, in fact, provided a number of services to thousands of MCNA's enrollees since signing the Master Dental Provider Agreement provides evidence of his necessity in the MCNA network. App. Vol. II, pp. 623-625 - Plaintiff's Exhibit 34; App. Vol. I, pp. 309-310, 322 - Trial Tr. 77:13-78:23,

134:10-15. Furthermore, there was evidence presented that at the same time MCNA was attempting to terminate its contract with Colwell on the alleged basis that its network was adequate, it was entering an arrangement with the Iowa Department of Human Services to spend $3 million to strengthen its provider network and improve member access and quality outcomes. App. Vol. II, p. 387 - Plaintiff's Exhibit 17. MCNA's claim that it was only trying to augment its specialist and rural provider network is without any support in the record. See MCNA's Brief, p. 37. MCNA's own "Network Development Recruitment Action Plan" related to its spending of the $3 million clearly stated that its plan applied to the entire state and involved MCNA reaching out to "all non-contracted providers throughout the state beginning in June 2019 through the end of the year 2019" in attempt to get them to become MCNA Dental Wellness Plan providers. App. Vol. II, pp. 388-392 - Plaintiff's Exhibit 18; App. Vol. I, pp. 342-343 - Trial Tr. 167:11-21, 168:9-12. If network adequacy depended upon MCNA reaching out to every dental provider in the state which it had not already contracted with and presumably contracting with at least some of those providers, it is unfathomable how it could at the same time find that it no longer needed a provider who it had contracted with since 2016 and who had provided a significant amount of dental services to its members since that time. Even

after its attempted termination of Colwell, MCNA continued to contact him to find out whether he was still taking MCNA patients. App. Vol. I, pp. 321-322 - Trial Tr. 133:25-134:9.

This evidence of network adequacy issues was further supported by the grievances regarding MCNA in 2018 and 2019. The majority of the grievances submitted by members, which are received and categorized by MCNA and then reported to the Department, fell into the categories of "provider not in network", "lack of providers in network" or "access to care/network adequacy" issues. App. Vol. II, pp. 608-622 - Plaintiff's Exhibits 30 through 33; App. Vol. I, pp. 346-351 - Trial Tr. 171:15-176:18. MCNA's witness attempted to discount this written information by asserting that she had information that she "could" supply showing that these categories were not "what it appears to be." App. Vol. I, pp. 348, 351-352, 354 - Trial Tr. 173:6-14, 176:21-177:18, 179:4-5. The Court clearly did not find this testimony to be reliable, especially when MCNA did not provide any further support for such statements. App. Vol. I, p. 255 - Order, p. 25.

MCNA cites to a 2018 audit in an effort to assert that there is not sufficient evidence of network inadequacy. See MCNA's Brief, p. 38. A few positive statements in a 2018 audit regarding MCNA's network adequacy does not mean there is a lack of evidence for the District Court's

finding on this issue. "Evidence is not insubstantial merely because different conclusions may be drawn from the evidence." Cedar Rapids Community School District v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (citing John Deere Dubuque Works of Deere & Co. v. Weyant, 442 N.W.2d 101, 105 (Iowa 1989)). The appellate court's task "is not to determine whether the evidence supports a different finding" but rather to "determine whether substantial evidence, viewing the record as a whole, supports the findings actually made." Id. (citing Iowa Code § 17A.19(10)(f); Schutjer v. Algona Manor Care Center, 780 N.W.2d 549, 557-58 (Iowa 2010)).

Apparently understanding the lack of support for its network sufficiency reasoning, MCNA also asserted that it terminated (or decided not to renew) Colwell's Master Dental Provider Agreement because of the "struggles" he caused. See, e.g., MCNA's Brief, p. 58. As recognized by the District Court and set forth above in the Statement of the Facts, there was insufficient credible evidence of these alleged struggles. App. Vol. I, p. 249 - Order, p. 19, n. 8. Ms. Turner's inability to provide any information on the details of these alleged struggles, outside of the protected activity of appealing claims on behalf of members, clearly showed that this was nothing more than an attempt to paint Colwell in a bad light and to cover up MCNA's actual reasons for wanting to terminate Colwell – the significant

and expensive services he provided to members, his successful claim appeals and his ongoing advocacy and attempts to ensure that MCNA is living up to its end of the bargain. App. Vol. I, p. 249 - Order, p. 19, n. 8; see also App. Vol. II, pp. 224-324 - Plaintiff's Exhibit 6, § E.4.05, Section 4 § 438.10(b) (providing that MCNA cannot take punitive action against a provider who supports an enrollee's appeal).

III. THE DISTRICT COURT DID NOT ERR IN HOLDING THAT MCNA'S ATTEMPTED TERMINATION OF THE MASTER DENTAL PROVIDER AGREEMENT CONSTITUTED A BREACH DUE TO THE REQUIREMENTS OF IOWA CODE SECTION 249N.6.

A. Preservation of Error and Standard of Review.

Colwell agrees that this issue has been preserved. Colwell agrees that the District Court's interpretation of a statute is reviewed for correction of errors at law. See Clarke County Reservoir Commission v. Abbott, 862 N.W.2d 166, 171 (Iowa 2015) (citing Star Equipment, Ltd. v. State, 843 N.W.2d 446, 451 (Iowa 2014)). However, MCNA's claimed de novo standard of review is inapplicable and taken out of context. See MCNA's Brief, p. 26. The dissenting opinion in Service Employees International Union, Local 199 v. Iowa Board of Regents, 928 N.W.2d 69 (Iowa 2019) held that the Court was free to substitute its de novo interpretation of an administrative rule in the context of reviewing the interpretation of such rule

and upon finding that the agency whose interpretation was at issue did not have interpretive authority over the rule. Service Employees International Union, Local 199, 928 N.W.2d at 80. This case does not involve an agency's interpretation of an administrative rule and does not involve the analysis of an agency's interpretative authority. Accordingly, there is no support for de novo review with regard to the administrative rule raised by MCNA in support of its argument regarding Iowa Code section 249N.6.

B. The District Court Did Not Err in Holding That Iowa Code Section 249N.6(1) Prohibited MCNA's Attempted Termination of its Master Dental Provider Agreement With Colwell.

1. The clear language of Iowa Code section 249N.6(1) supports the District Court's findings.

MCNA acknowledged in its April 24, 2019 letter that it sought to end its relationship with Colwell as to the "Iowa Dental Wellness Plan Product Attachment" and admitted in its Answer that the Dental Wellness Plan is the product at issue in the Master Dental Provider Agreement. App. Vol. II, p. 191 - Plaintiff's Exhibit 4; App. Vol. I, pp. 9, 10, 224 - Petition ¶¶ 7, 12; Answer ¶ 7, 12. In describing the requirements of the provider network for the Iowa Health and Wellness Plan, the Iowa Code states as follows:

> *The Iowa health and wellness plan provider network shall include all providers enrolled in the medical assistance*

> *program*[3] and all participating accountable care organizations. Reimbursement under this chapter shall only be made to such Iowa health and wellness plan providers for covered benefits.

Iowa Code § 249N.6(1) (emphasis added). Under this clear directive, the provider network for the Dental Wellness Plan, which is administered by MCNA and Delta Dental, is required to include all providers that are approved by Medicaid. Colwell is and always has been a provider enrolled in the medical assistance program or Medicaid. App. Vol. I, pp. 11, 225, 276 - Petition ¶ 18; Answer ¶ 18; Trial Tr. 8:9-13. This provision affirms that MCNA must continue to contract with Colwell should Colwell so desire and so long as he is enrolled as a provider in Medicaid. This type of provision is often referred to as an "Any Willing Provider" provision. Although MCNA recognizes this as an Any Willing Provider provision, it attempts to limit its application. See MCNA's Brief, pp. 26-33.

MCNA first claims that Iowa Code section 249N.6(1) only applies to the State-run Medicaid provider network and not the network of the state's managed care organizations. See MCNA's Brief, pp. 27. Iowa Code section 249N.2(13) provides that the "Iowa Health and Wellness Plan provider network" – the term used in Iowa Code section 249N.6(1) – means "the

[3] "Medical assistance program" is another word for Medicaid and means "the program paying all or part of the costs of care and services provided to an individual pursuant to [Iowa Code] chapter 249A and Tit. XIX of the federal Social Security Act." Iowa Code § 249N.2(14).

health care delivery network approved by the department for Iowa health and wellness plan members." Iowa Code § 249N.2(13). This definition includes MCNA's network, because its network and the individual providers within it must be approved by the Department. App. Vol. II, pp. 198-199, 221-227, 347-348 - Plaintiff's Exhibit 6, § 1.2.1 (providing general provisions regarding Department Monitoring, Review and Problem Reporting), § E (providing requirements for MCNA's Providers and Provider Network), Section 4 § 438.214 (setting forth requirements on provider selection). The Department also requires MCNA to submit information to the Department regarding provider network access and grievances and as discussed above, allowed MCNA to keep funds that otherwise would have gone to the Department to strengthen its network. App. Vol. II, pp. 387-429, 608-622 - Plaintiff's Exhibits 17-20, 30-33. The Department clearly approves the health care delivery network for Iowa Health and Wellness Plan members and thus, the definition set forth in Iowa Code section 249N.2(13) encompasses MCNA's network of providers for the Iowa Health and Wellness Plan.

The Department itself has acknowledged that Iowa Code section 249N.6(1) applies regardless of the involvement of MCNA or Delta Dental as managed care organizations. In its Informational Letter No. 1667 dated

May 3, 2016, the Department specifically described the Dental Wellness Plan, which is part of the Iowa Health and Wellness Plan, as an Any Willing Provider program. App. Vol. II, p. 190 - Plaintiff's Exhibit 3. Notably, Informational Letter No. 1667 directly discussed its existing managed care organization, Delta Dental, and noted that MCNA was seeking to become the second managed care organization. App. Vol. II, p. 190 - Plaintiff's Exhibit 3. If the Department believed that the requirement set forth in Iowa Code section 249N.6(1) did not apply when it was utilizing managed care organizations, it certainly would not have referenced it as an Any Willing Provider program when discussing those managed care organizations.

MCNA has been unable to explain away Informational Letter No. 1667. In its Brief, MCNA discounts the Informational Letter because it did not "provide additional guidance on its scope." See MCNA's Brief, p. 29. While the Informational Letter is not a full legal analysis of Iowa Code section 249N.6(1), it does not minimize the fact that the Department clearly called the Dental Wellness Plan, in the context of its management by Delta and potentially MCNA, an Any Willing Provider program. App. Vol. II, p. 190 - Plaintiff's Exhibit 3. This language has a clear and unequivocal meaning.

At trial, Ms. Turner attempted to assert that the use of the term Any Willing Provider in such letter referred to Delta Dental and MCNA as "providers" of the Dental Wellness Plan. App. Vol. I, pp. 335-336 - Trial Tr. 154:12-155:1. As the District Court found, this testimony was not credible and was inconsistent with the general and common meaning of Any Willing Provider as used in the context of Medicaid. See Centers for Medicare & Medicaid Services, SMD #16-005, available at https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf (describing the federal provisions generally referred to as Any Willing Provider or "free choice of provider" provisions) (accessed July 22, 2020). Ms. Turner had to admit during her testimony that the Informational Letter did not state that the word "provider" included MCNA and Delta Dental. App. Vol. I, p. 336 - Trial Tr. 155:18-22. Ms. Turner's assertion is also inconsistent with prior statements made by her in a court proceeding involving Colwell in Nebraska. App. Vol. I, pp. 333-334 - Trial Tr. 152:22-153:10 (citing to transcript from Nebraska proceeding). The federal and state laws regarding Medicaid consistently define the term "provider" as the individuals or entities delivering health care services. See, e.g., 42 C.F.R. § 400.203 (stating definition of "provider" in the Medicaid context); Iowa Admin. Code r. 441-7.2(6)

(identifying when "providers" are "aggrieved parties" for hearing purposes and identifying actions that could only apply to those providing medical or dental services to patients). MCNA's own documents repeatedly refer to the individuals or entities delivering dental services as providers. See, e.g., App. Vol. II, pp. 25-189 - Plaintiff's Exhibit 2 (providing MCNA's Provider Manual, which sets forth the rights and obligations of providers and indicates that the providers must be licensed by the Iowa Dental Board); App. Vol. II, pp. 194-375 - Plaintiff's Exhibit 6 (State Contract using the term "Provider" to describe those individuals or entities that provide dental services under the Dental Wellness Plan). In contrast, MCNA is typically referred to as the Contractor, MCO or PAHP. App. Vol. II, pp. 194-375 - Plaintiff's Exhibit 6. Even in the general health insurance context, provider is understood to mean the individual providing the health care service, such as a doctor, nurse, hospital or clinic. See Health Insurance Glossary, available at https://www.ehealthinsurance.com/health-insurance-glossary/terms-p/ (accessed July 22, 2020). That fact that MCNA's witness tried to change the common meaning of this term to fit its narrative shows the weakness of its argument.

2. The elimination of duplicative language from an administrative rule and language in other parts of the Iowa Administrative Code do not impact the applicability of Iowa Code section 249N.6(1).

MCNA next asserts that language removed from an Iowa Administrative Code section eliminated the application of Iowa Code section 249N.6(1) to MCNA. See MCNA's Brief, pp. 29-31. MCNA claims that because the exact same language that was in Iowa Code section 249N.6(1) (i.e., "Iowa wellness plan provider network shall include all providers enrolled in the medical assistance program…") was removed from an administrative code section, its purpose must have been to eliminate the Any Willing Provider rule to managed care entities. See MCNA's Brief, p. 30. This argument has no merit. The administrative rule at issue - Iowa Administrative Code section 441-74.12(b) – was located within the Department's chapter regarding the Iowa Health and Wellness Plan. See Iowa Admin. Code 441-74 (entitled "Iowa Health and Wellness Plan"). There was no reasoning given for elimination of this provision of the administrative rule. App. Vol. II, pp. 832-868 - Defendants' Exhibit A (ARC 2361C). At best, it appears it may have been stricken because that sentence also included a reference to accountable care organizations, and the Department indicated it was removing such references. App. Vol. II, p. 832 - Defendants' Exhibit A, p. 38 (ARC 2361C). There is no mention of the managed care organizations in relationship to the revision, and the chapter at issue does not pertain to managed care organizations specifically. Notably,

immediately after elimination of the administrative rule, the Department called the Dental Wellness Plan an Any Willing Provider program in the context of discussing the current and possible future managed care organizations. Compare App. Vol. II, p. 190 - Plaintiff's Exhibit 3 (providing Informational Letter No. 1667, which was issued on May 3, 2016) with App. Vol. II, pp. 832-868 - Defendant's Exhibit A, pp. 38-74 (providing copy of rule changes made in ARC 2361C, which became effective on January 1, 2016). The Department did not apparently believe that the elimination of the rule changed the application of Iowa Code section 249N.6(1).

MCNA's argument regarding the administrative code change also violates long-standing principles regarding the relationship between statutes and administrative rules. '"The plain provisions of a statute cannot be altered by administrative rule."' Brakke v. Iowa Department of Natural Resources, 897 N.W.2d 522, 533 (Iowa 2017) (quoting Schmitt v. Iowa Department of Social Services, 263 N.W.2d 739, 745 (Iowa 1978)). The provisions of Iowa Code section 249N.6(1) have not been amended, and the Department cannot eliminate a statutory requirement simply by eliminating duplicative language that exists in an administrative rule. See City of Des Moines v. Iowa Department of Transportation, 911 N.W.2d 431, 441 (Iowa

2018) (holding that an administrative agency cannot by rule expand or limit authority granted by statute).

Finally, MCNA argues that other provisions of the Iowa Administrative Code – namely Iowa Administrative Code sections 441-73.8(2) and the Preamble of Iowa Administrative Code section 441-73 – somehow restrict the application of Iowa Code section 249N.6(1). See MCNA's Brief, pp. 30-31. Regardless of what these provisions state, administrative rules cannot alter a statute. Brakke, 897 N.W.2d at 533. Iowa Administrative Code section 441-73.8(2) merely repeats and references federal language, which will be addressed more fully in Argument Section IV.B below.

MCNA's reliance on language in the Preamble, which states that provision of medical assistance benefits through managed care shall be consistent with "this chapter and with the [State] [C]ontract", attempts to elevate contractual provisions above state law. Contracts – even if entered by a state agency – cannot violate Iowa law. Prudential Insurance Co. of America v. Rand & Reed Powers Partnership, 972 F. Supp. 1194, 1205 (N.D. Iowa 1997) (outlining Iowa cases holding that statutory provisions control over contract provisions) (citing Smith Fertilizer & Grain Co. v. Wales, 450 N.W.2d 814, 815 (Iowa 1990), First National Bank of Creston v.

Creston Implement Co., 340 N.W.2d 777, 780 (Iowa 1983); CBS Real Estate of Cedar Rapids, Inc. v. Harper, 316 N.W.2d 170, 174-75 (Iowa 1982); Amana Society v. Colony Inn, Inc., 315 N.W.2d 101, 114 (1982)). The State Contract as well as the Master Dental Provider Agreement both acknowledge and incorporate state and federal law. App. Vol. II, p. 14 - Plaintiff's Exhibit 1, Art. IV, ¶ 1 ("each party shall carry out its obligations in accordance with terms of the Payor or State Contract and applicable federal and State laws"); App. Vol. II, pp. 258, 265, 276 - Plaintiff's Exhibit 6, § 2.1 (defining "Applicable Law" to include all applicable federal, state and local laws, rules, ordinances, regulations, orders, guidance, and policies in place at Contract execution as well as any and all future amendments, changes or additions to such laws as of the effective date of such change."), § J.2 (providing that MCNA must comply with all applicable federal and state laws and regulations), § 2.13.4 (providing that MCNA, its employees, agents and subcontractors must at all times comply with Applicable Law and providing that the Applicable Law is incorporated into the State Contract). In short, regardless of any provisions of the administrative rules or the State Contract, state statutes prevail over Iowa Administrative Code or State Contract provisions.

The clear language of Iowa Code section 249N.6(1), as recognized by the Department itself, requires the Dental Wellness Plan to be an Any Willing Provider program, regardless of whether it is administered directly by the Department or through a managed care organization. App. App. II, p. 190 - Plaintiff's Exhibit 3. As the Department's contractor, MCNA is bound to satisfy the same requirements of the Department under applicable law. See Iowa Code § 249N.3(3) (recognizing that the Department may contract with others to provide support or "other components of the Iowa health and wellness plan"). As a result, MCNA cannot terminate Colwell who is an Any Willing Provider and who meets the requirements for being a provider. To do so is to breach Iowa law and MCNA's Master Dental Provider Agreement with Colwell. The District Court correctly held that MCNA's action was a violation of Iowa Code section 249N.6(1) and thus, a breach of its contract with Colwell. App. Vol. I, pp. 242-246 - Order, pp. 12-16. Such holding should be affirmed.

IV. THE DISTRICT COURT DID NOT ERR IN RELYING UPON FEDERAL LAW AND THE STATE CONTRACT TO SUPPORT ITS HOLDING THAT MCNA BREACHED ITS CONTRACT WITH COLWELL.

A. Preservation of Error and Standard of Review.

Colwell agrees that these issues were preserved for review. As set forth in the previous sections, MCNA's assertion regarding the standard of

review is correct, it is not complete. See MCNA's Brief, Argument §§ I, IV. An action for breach of contract is reviewed for errors at law. Kurt, 683 N.W.2d at *2 (citing Land O'Lakes, Inc., 610 N.W.2d at 522). The District Court's findings of fact are binding if supported by substantial evidence. Id. (citing Land O'Lakes, Inc., 610 N.W.2d at 522); see also Poole, 666 N.W.2d at 565. Any ambiguous findings are construed to uphold, not defeat, the judgment. Hodges, 746 N.W.2d at *1. The District Court's legal conclusions and application of legal principles are not binding on this Court, but this Court is only to reverse if it concludes that the District Court "erroneously applied rules of law that materially affected its decision." Kurt, 683 N.W.2d at *2 (citing Land O'Lakes, 610 N.W.2d at 522).

B. The Applicable Federal Provisions Support the Court's Determination That MCNA Breached the Master Dental Provider Agreement.

Federal law also applies to the contractual relationship between Colwell and MCNA. App. Vol. II, pp. 14, 21 - Plaintiff's Exhibit 1, Art. IV, ¶ 1 (providing that the parties agree to carry out obligations in accordance with state and federal law and regulations), Art. XI, ¶ 5 (providing that the contract is governed by federal and state law). The federal provision requiring "Any Willing Provider" or a "free choice of provider" provision states as follows:

> A State plan for medical assistance must…(23) provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system…, a medicaid managed care organization, or similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1396d(a)(4)(C) of this title [relating to family planning], except as provided in subsection (g), in section 1396n of this title [relating to AIDS case management], and in section 1396u-2(a) of this title [relating to children with special needs], except that this paragraph shall not apply in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense in which the State agency determines it is inconsistent with the best interests of beneficiaries under the State plan or by a provider or supplier to which a moratorium under subsection (kk)(4)[4] is applied during the period of such moratorium….

42 U.S.C. § 1396a(a)(23). This provision is further supported by various federal regulations that similarly guarantee the free choice of providers other

[4] This section provides that the state has the option of imposing a moratorium on entering participation agreements with providers or suppliers, or establishing periods of enrollment moratoria, numerical caps or other limits for providers or suppliers identified as being at high-risk for fraud, waste or abuse as necessary to combat such fraud, waste or abuse, but only so long as the state determines that the moratorium, cap or other limit will not adversely impact patients' access to medical assistance. 42 U.S.C. § 1396a(kk)(4)(B). The state of Iowa has not imposed any of these limits with regard to the Dental Wellness Plan.

than providers who are specifically exempted from such requirements and/or who are excluded from participation in federal health care programs. See, e.g., 42 C.F.R. §§ 431.51 (discussing free choice of providers and requirement that state plans must allow for any provider that is qualified to furnish the service and is willing to furnish it), 431.54 (providing exceptions to the free choice of provider requirements, none of which apply here); 438.214 (providing that managed care organizations must have a uniform and documented credentialing process, cannot discriminate against providers that serve high-risk populations or specialize in conditions that require costly treatment, cannot contract with excluded providers and must comply with any additional state requirements).

The application of 42 U.S.C. section 1396a(a)(23) prevents MCNA from terminating Colwell so long as he is "qualified", which is defined as one who is '"capable of performing the needed medical services in a professionally competent, safe, legal and ethical manner."' Planned Parenthood of Kansas v. Andersen, 882 F.3d 1205, 1230 (10th Cir. 2018) (quoting Planned Parenthood of Gulf Coast, Inc. v. Gee, 862 F.3d 445, 462 (5th Cir. 2017) (further internal citations omitted)); see also Daub v. New Hampshire Department of Health and Human Services, 97 A.3d 241, 247-49 (N.H. 2014) (citations omitted). Courts have further held that while the

states (and by extension, their managed care organizations) have discretion to establish provider qualifications, such authority only extends to setting qualifications that are related to professional competency and patient care. Planned Parenthood of Kansas, 882 F.3d at 1230 (citing Planned Parenthood Arizona, Inc. v. Betlach, 727 F.3d 960, 970 (9th Cir. 2013)). Other grounds for termination relate to misconduct under federal law (e.g., fraud, drug crimes, license revocations, etc.) or state law (e.g., health and safety regulations). See id. at 1230-31 (citing 42 C.F.R. §431.51(c)(2)). Failing to apply reasonable standards in an evenhanded manner may suggest that a provider is being inappropriately and impermissibly targeted. See SMD #16-005, Re: Clarifying "Free Choice of Provider" Requirement in Conjunction with State Authority to Take Action Against Medicaid Providers (April 19, 2016), available at https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf. None of those grounds exist or are alleged to exist here with regard to Colwell.

MCNA asserts that this provision does not apply to managed care organizations except in the context of family planning providers. See MCNA's Brief, Argument § I. However, the first provision of 42 U.S.C. section 1396a(a)(23), expressly states that it applies to "any individual eligible for medical assistance", which would include individuals who

receive medical assistance coverage through managed care organizations. In order to receive coverage through MCNA under the Dental Wellness Plan, an individual must be "eligible for medical assistance." Iowa Code § 249N.2(6) (defining "eligible individual" as an "individual eligible for medical assistance pursuant to" Iowa Code section 249A.3(1)(v), which describe the persons eligible for extended coverage for the Dental Wellness Plan); see also App. Vol. II, p. 203 - Plaintiff's Exhibit 6, § A.2.5 (provision of State Contract providing that MCNA shall accept as enrollees all persons the Department has determined are eligible and are transmitted via enrollment file to MCNA). The determination of eligibility does not change if a managed care organization is paying providers rather than the Department. The State Contract actually defines an enrollee as "a Medicaid beneficiary who is currently enrolled with [MCNA]". App. Vol. II, p. 307 - Plaintiff's Exhibit 6, Section 4 § 438.2.

Even if MCNA is correct that 42 U.S.C. section 1396a(a)(23) only applies in the context of family planning with respect to managed care providers, this does not eliminate the clearly applicable provisions of Iowa Code section 249N.6(1). See Argument § III. Certainly, a state can provide additional requirements for its Medicaid related programs beyond what the federal minimum standards require. See, e.g., Hallam v. Missouri

Department of Social Services, 564 S.W.3d 703, 707 (Mo. Ct. App. 2018) (providing that state may design a Medicaid plan to meet its needs and conditions as long as it operates within and does not run afoul of the federal framework).

C. The State Contract, Which Reflects Federal Requirements, Also Supports the District Court's Holding That MCNA Breached the Master Dental Provider Agreement.

MCNA's State Contract, which is expressly incorporated into the Master Dental Provider Agreement, contains various provisions that also prohibit MCNA's ending of the contract with Colwell. Many of these provisions directly quote and incorporate federal law.

> *E.2 Discrimination*
> E.2.01 [MCNA] shall not discriminate against any provider (limiting their participation, reimbursement or indemnification) who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. See the additional obligations set forth in Section 4 § 438.12(a)(1).[5]
>
> *E.3 Provider Selection*
> E.3.01 [MCNA] shall give written notice of the reason for its decision when it declines to include individuals or groups of

[5] Section 4 of the State Contract contains provisions that are the same as and reflect the same section numbering as provisions from Title 42 of the Code of Federal Regulations (C.F.R.). For example, State Contract Section 4 § 438.12(a)(1) is the same language that is contained in 42 C.F.R. 438.12(a)(1).

providers in its provider network. See the additional obligations set forth in Section 4 § 438.12(a)(1).[6]

***

E.3.05 [MCNA]'s selection policies and procedures shall not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment. See the additional obligations as set forth in Section 4 § 438.12(a)(2) and Section 4 § 438.214(c).

***

E.4 Anti-Gag

E.4.01-E.4.04 [MCNA] shall not prohibit or restrict a provider acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his or her patient regarding:

1. The enrollee's health status, medical care, or treatment options, including any alternative treatment that may be self-administered.
2. Any information the enrollee needs to decide among all relevant treatment options.
3. The risks, benefits, and consequences of treatment or non-treatment.
4. The enrollee's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

See the additional obligations as set forth in Section 4 § 438.102(a)(1)(i)-(iv) and section 1932(b)(3)(A) of the Social Security Act [42 U.S.C. § 1396u-2(b)(3)(A)].

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[6] Ms. Turner originally argued that this provision only applied during the initial credentialing process. App. Vol. I, pp. 328-329 - Trial Tr. 142:23-143:12. She walked back such testimony when she sought to apply a provision in the same section (E.3) to Colwell. App. Vol. I, p. 339 - Trial Tr. 163:7-19.

> E.4.05 [MCNA] shall take no punitive action against a provider who either requests an expedited resolution or supports an enrollee's appeal. See the additional obligations as set forth in Section 4 § 438.410(b).

See App. Vol. II, pp. 223-224, 329, 340, 348, 365 - Plaintiff's Exhibit 6, pp. 30-31, 136, 147, 155, 172; see also App. Vol. I, pp. 14-15, 226-227 - Petition, ¶¶ 35, 37; Answer ¶¶ 35, 37.

Collectively with the federal law upon which these provisions rely and Iowa Code section 249N.6(1), MCNA cannot end its contract with Colwell (whether calling it a termination or a nonrenewal) unless it has a specific cause that relates to a "fraud or criminal action, material non-compliance with relevant requirements, or material issues concerning the fitness of the provider to perform covered services or appropriately bill for them". See SMD #16-005, Re: Clarifying "Free Choice of Provider" Requirement in Conjunction with State Authority to Take Action Against Medicaid Providers (April 19, 2016), available at https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf. These are the only enforceable and valid limits on the "Any Willing Provider" requirements established by these various state and federal statutory and regulatory provisions as well as the State Contract.

MCNA's arguments with regard to the State Contract are primarily based upon allegations that Colwell did not present sufficient evidence of the

specific act Colwell undertook that led to MCNA's decision. See MCNA's Brief, Argument § IV. As the District Court expressly held, the evidence showed that MCNA relied upon its "administrative costs" argument as an excuse to cover up its violation of these various anti-discrimination provisions. App. Vol. I, p. 252 - Order, p. 22. Colwell's only alleged actions translating to "administrative" tasks by MCNA were filing claims, requesting assistance or explanation of claim determinations, filing of appeals,[7] requesting expedited resolution, asking for peer-to-peer calls (which were never given) and filing an action for unpaid claims in Nebraska. See, e.g., App. Vol. I, pp. 289, 298-300, 302-304, 410-411 - Trial Tr. 39:11-14, 49:9-23, 50:20-21, 51:12-15; 55:6-56:17, 57:1-12, 268:16-269:2. The "costs" that MCNA incurred as a result of Colwell related to his treatment of high-risk populations and his provision of services that are costly in that they

[7] MCNA supplied Exhibit D to the Court in attempt to show that it was not retaliating against Colwell, because he is not a "big appealer" in comparison to other providers. App. Vol. I, p. 375 - Trial Tr. 212:17-20. However, as the District Court recognized, Exhibit D shows only a limited amount of time and did not include state fair hearings pursued by Colwell. App. Vol. I, pp. 374-376 - Trial Tr. 211:20-212:20, 213:7-12. Even in that limited amount of time, Colwell and the other providers had only one less appeal than the largest provider in the state and Colwell was the only provider who was successful on more than half of his filed appeals. App. Vol. III, pp. 8-10 - Exhibit D; App. Vol. I, pp. 376-378Trial Tr. 213:18-214:7, 216:3-13. While MCNA may claim that Colwell is not a "big appealer", his appeals required MCNA to reverse more decisions than any other provider in the state, thereby resulting in additional claims to be paid by MCNA.

do not fall under the Annual Benefit Maximum. App. Vol. I, pp. 295-297 - Trial Tr. 45:9-47:20. Even Iowa Code section 249N.6(1) did not exist and MCNA could use "administrative costs" to justify termination of Colwell, it is clear that the costs MCNA is actually relying upon are related to the types of actions and events upon which it cannot base a decision to terminate or otherwise refuse to contract with Colwell.

MCNA inappropriately attempts to require Colwell to "prove up" a discrimination claim. See MCNA's Brief, pp. 45, 47. The claim at issue is whether MCNA's actions breached the Master Dental Provider Agreement, not whether it committed discrimination. Even if a breach of contract claim did require the same level of proof as a discrimination claim, the "determinative factor" requirement only requires Colwell to show that the discriminatory reasons "tip[ped] the scales decisively one way or the other." Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682, 686 (Iowa 1990). He does not need to prove that the protected actions, such as supporting member appeals or providing services to high-risk populations, were "the main reason" behind MCNA's termination decision. Id.

The District Court correctly held that MCNA breached the Master Dental Provider Agreement in that its provided reasons were nothing more than a "flawed pretext" to escape these State Contract provisions that clearly

prohibited their conduct. App. Vol. I, pp. 252-253 - Order, pp. 22-23. Accordingly, the District Court's holding in this regard should be affirmed.

CONCLUSION

WHEREFORE for all the reasons stated herein, Appellee Robert F. Colwell, Jr., D.D.S. respectfully requests the Court affirm the District Court's Findings of Fact and Conclusions of Law in its entirety. Appellee further respectfully requests the costs of this action be assessed against Appellant and for such other and further relief the Court deems necessary under the circumstances.

REQUEST FOR ORAL SUBMISSION

Pursuant to Iowa Rule of Appellate Procedure 6.908, Appellee requests oral argument in this matter.

/s/ *Rebecca A. Brommel*
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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on August 27, 2020, I electronically filed this Final Brief in accordance with Chapter 16 of the Iowa Rules of Court, which will electronically serve the following attorneys of record:

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Rebecca A. Brommel Date