

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2011-093099

07/22/2011

HONORABLE LINDA A. AKERS

CLERK OF THE COURT
I. Ostrander
Deputy

THOMAS E BLANKENBAKER, et al.

DAVID L ABNEY

v.

CHRISTINA URIAS

ALYSE CHERYL MEISLIK

RULING

Following oral argument, the Court took under advisement Defendant's motion to dismiss Plaintiff's *Verified Statutory Special-Action Complaint* for failure to state a claim upon which relief may be granted.

Plaintiffs complain that the Director of Insurance has failed to enforce the provisions of A.R.S. § 20-461 (B) under an inferred mandate pursuant to A.R.S. § 20-142 (A) (requiring that the director enforce the provisions of this title).

Defendant responds that there is no mandate to act under any specific circumstances. Defendant concedes that she has a broad, general mandate to enforce the provisions of this title.

Plaintiffs infer a mandate to act from the following provisions. Under the article applying to all insurers having a certificate of authority issued by the Director of Insurance, A.R.S. § 20-461 (A) (17) provides that a person shall not commit (or perform with such frequency to indicate a general business practice) failing to pay charges for reasonable and necessary services provided by any physician. A.R.S. § 20-461 (B) requires that nothing in subsection (A) (17) be construed to prohibit the application of deductibles, coinsurance, preferred provider organization requirements, cost containment measures, or quality assurance measures if they are equally applied to all types of physicians referred to in this section.

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Mandamus is an extraordinary remedy issued by a court to compel a public officer to perform an act that the law specifically imposes as a duty. When an official has discretion about how to perform a function, mandamus is available to require her to act properly only if the official abuses that discretion. See *Sensing v. Harris*, 217 Ariz.261 (Ct. App. 2007) and the cases cited therein.

In this case, the Director of Insurance has discretion to enforce the insurance laws of this state. The provision of law that Plaintiff seeks to enforce by mandamus provides that deductibles are not prohibited when applied to paying charges for reasonable and necessary services. The law does not impose upon the Director a specific action or requirement to act. Mandamus is not available under these circumstances.

Accordingly,

IT IS ORDERED granting *Defendant's Motion to Dismiss for Failure to State a Claim*.

IT IS FURTHER ORDERED dismissing this case, with prejudice.

DATED this 22nd day of July 2011.

/S/ LINDA A. AKERS

HONORABLE LINDA A. AKERS
JUDICIAL OFFICER OF THE SUPERIOR COURT

ALERT: eFiling through AZTurboCourt.gov is mandatory in civil cases for attorney-filed documents effective May 1, 2011. See Arizona Supreme Court Administrative Orders 2010-117 and 2011-010. The Court may impose sanctions against counsel to ensure compliance with this requirement after May 1, 2011.