

Uldaho Law

Digital Commons @ Uldaho Law

Idaho Supreme Court Records & Briefs, All

Idaho Supreme Court Records & Briefs

9-13-2017

In Re Decision on Joint Motion to Certify Question of Law to Idaho Supreme Court (Dkt. 31, 32, 45) Appellant's Brief Dckt. 45187

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"In Re Decision on Joint Motion to Certify Question of Law to Idaho Supreme Court (Dkt. 31, 32, 45) Appellant's Brief Dckt. 45187" (2017). *Idaho Supreme Court Records & Briefs, All*. 7331. https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/7331

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

Case No. 45187-2017

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE CERTIFIED QUESTION OF LAW:

POCATELLO HOSPITAL, LLC dba PORTNEUF MEDICAL CENTER,

Appellant,

vs.

CORIZON LLC,

Respondent.

APPELLANT'S BRIEF

**ON ORDER CERTIFYING QUESTION TO THE IDAHO SUPREME COURT
FROM THE U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO
Honorable Chief U.S. Magistrate Judge Ronald E. Bush, presiding
District of Idaho Case No. 4:16-CV-00032-REB**

Scott J. Smith (ISB #6014)
RACINE OLSON NYE &
BUDGE, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
Facsimile: (208) 232-6109
Email: sjs@racinelaw.net
Attorneys for Appellant

John J. Burke (ISB #4619)
ELAM & BURKE P.A.
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Email: jjb@elamburke.com
Attorneys for Respondent

TABLE OF CONTENTS

CASES AND AUTHORITIES 3

STATEMENT OF THE CASE..... 4

 I. Nature of the Case..... 4

 II. Statement of the Facts..... 4

 III. Course of Proceedings 9

ISSUE PRESENTED ON APPEAL..... 11

STANDARD OF REVIEW 12

 I. Certified Question..... 12

 II. Statutory Construction 12

ARGUMENT..... 13

 I. Idaho Code § 20-237B and the statutory definitions of the terms “state board of correction” and “department of correction” are unambiguous and do not include privatized correctional medical providers under contract with IDOC..... 13

 II. Even if Idaho Code § 20-237B and the statutory definitions of the terms “state board of correction” and “department of correction” are considered ambiguous, canons of construction and legislative history reveal that the Idaho legislature did not intend for the terms “state board of correction” and “department of correction” to include privatized correctional medical providers under contract with IDOC..... 16

CONCLUSION..... 24

CERTIFICATE OF SERVICE 25

CASES AND AUTHORITIES

Cases

<i>BHA Investments, Inc. v. City of Boise</i> , 138 Idaho 356, 63 P.3d 482 (2003)	14, 16
<i>BHC Intermountain Hosp., Inc. v. Ada County</i> , 150 Idaho 93, 244 P.3d 237 (2010)	12
<i>Connecticut Nat'l Bank v. Germain</i> , 503 U.S. 249 (1992)	15
<i>Cowan v. Board of Commissioners</i> , 143 Idaho 501, 148 P.3d 1247 (2006).....	13
<i>Doe v. BSA</i> , 159 Idaho 103, 356 P.3d 1049 (2015)	12
<i>Estelle v. Gamble</i> , 429 U.S. 97 (1976)	4
<i>Farm Bureau Mut. Ins. Co. v. Schrock</i> , 150 Idaho 817, 252 P.3d 98 (2011)	17
<i>Farmers Nat'l Bank v. Green River Dairy, LLC</i> , 155 Idaho 853, 318 P.3d 622 (2014)	14, 16
<i>Gibson v. Ada Cnty.</i> , 142 Idaho 746, 133 P.3d 1211 (2006)	12
<i>Harrigfeld v. Hancock</i> , 140 Idaho 134, 90 P.3d 884 (2004)	12
<i>Hoskins v. Howard</i> , 132 Idaho 311, 971 P.2d 1135 (1998).....	20
<i>Idaho Department of Correction v. Anderson</i> , 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000).....	5
<i>J & M Cattle Co., Ltd. Liab. Co. v. Farmers Nat'l Bank</i> , 156 Idaho 690, 330 P.3d 1048 (2014).....	16
<i>James v. City of Boise</i> , 160 Idaho 466, 376 P.3d 33 (2016)	13
<i>Mayer v. TPC Holdings, Inc.</i> , 160 Idaho 223, 370 P.3d 738 (2016)	15
<i>Roe v. Hopper</i> , 90 Idaho 22, 408 P.2d 161 (1965)	15, 19
<i>Safe Air For Everyone v. Idaho State Dep't of Agric.</i> , 145 Idaho 164, 177 P.3d 378 (2008).....	18
<i>St. Luke's Magic Valley Reg'l Med. Ctr. v. Luciani</i> , 154 Idaho 37, 293 P.3d 661 (2013)	12
<i>State v. Hensley</i> , 145 Idaho 852, 187 P.3d 1227 (2008).....	12
<i>State v. Mercer</i> , 143 Idaho 108, 138 P.3d 308 (2006)	12
<i>State v. Yzaguirre</i> , 144 Idaho 471, 163 P.3d 1183 (2007).....	13, 15, 17

Statutes

Idaho Code § 20-201.....	4
Idaho Code § 20-201(3)	5
Idaho Code § 20-201A.....	14
Idaho Code § 20-209(1)	4
Idaho Code § 20-209(3)	4
Idaho Code § 20-237B	9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23
Idaho Code § 20-237B(1)	9, 11, 16, 22, 24
Idaho Code § 20-237B(2)	9, 10, 11, 16, 18, 19, 20, 22, 24

Rules

Idaho Appellate Rule 12.3(a).....	12
-----------------------------------	----

STATEMENT OF THE CASE

I. Nature of the Case

This case comes to the Idaho Supreme Court as a certified question of law from the United States District Court for the District of Idaho.

II. Statement of the Facts

Pursuant to the Eighth Amendment to the United States Constitution, the State of Idaho is obligated to provide medical care to its prisoners. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).¹ Within the State of Idaho, the authority to control, direct, and manage correctional facilities is granted to the State Board of Correction. I.C. § 20-209(1).² The obligation to provide for the care, maintenance, and employment of all prisoners is also delegated to the State Board of Correction. *Id.*³ The State Board of Correction has “the authority to enter into contracts with private prison contractors” to meet this statutory obligation. I.C. § 20-209(3).⁴ The State Board of Correction, along with the Commission of Pardons and Parole, make up the Idaho Department of Correction (“IDOC”). I.C. § 20-201. “[T]he State Board of Correction exercises its constitutional and statutory authority through the instrumentality of the Department of Correction.” *Idaho De-*

¹ See also R. Vol. 2, p. 441 (IDOC’s Request for Proposal states: “The IDOC is responsible for the care and supervision of adult incarcerated Offenders under the IDOC’s jurisdiction. An element of that duty includes the provision of healthcare and mental health services to Offenders in correctional facilities and community work centers.”).

² See also R. Vol. 1, p. 64 (Memorandum in Support of Joint Motion to Certify Question of Law to the Idaho Supreme Court (hereinafter “Stipulated Memorandum”)).

³ See also *id.*

⁴ See also *id.*

partment of Correction v. Anderson, 134 Idaho 680, 690, 8 P.3d 675, 685 (Ct. App. 2000) (citing I.C. § 20-201(3)).

Corizon LLC (“Corizon”) is in the business of providing privatized correctional health care services.⁵ Corizon’s corporate office is in Tennessee and its operational headquarters is in Missouri.⁶ Corizon is a privately-held, for-profit entity.⁷ Since 2005, Corizon has contracted with IDOC to provide health care to Idaho prisoners.⁸

Pocatello Women’s Correctional Center (“PWCC”), located in Pocatello, Idaho, is a correctional facility under IDOC’s control, direction, and management.⁹ Under its contract with IDOC, Corizon is responsible for the medical care of the prisoners within PWCC.¹⁰

⁵ R. Vol. 1, p. 65 (Stipulated Memorandum).

⁶ R. Vol. 1, p. 151 (Corizon’s Technical Proposal states: “Corizon has the most comprehensive sophisticated corporate office in the industry... ‘Back shop’ business tasks are handled in our corporate office in Brentwood, Tennessee and our operational headquarters in St. Louis, Missouri.”).

⁷ R. Vol. 1, p. 97 (Corizon’s Technical Proposal states: “Corizon, Inc. is a corporation, incorporated in the State of Missouri, operating as a privately held, for-profit entity.”). *See also, e.g., Pena v. Corizon*, No. 1:11-cv-00366-BLW, 2016 U.S. Dist. LEXIS 30451, at *1-2, 2016 WL 901573 (D. Idaho Mar. 9, 2016) (“Corizon is a private corporation which is under contract to provide medical services to inmates in the custody of certain IDOC facilities.”); *Vitale v. Song*, No. 1:13-cv-00326-BLW, 2016 U.S. Dist. LEXIS 129300, at *19 (D. Idaho Sep. 21, 2016) (“[T]he Idaho Department of Correction contracted with Corizon, a private corporation, to provide medical services for a number of IDOC facilities.”).

⁸ R. Vol. 1, p. 101 (Corizon’s Technical Proposal states: “Corizon has had the privilege to serve as the Idaho Department of Correction (IDOC) healthcare partner since 2005.”).

⁹ R. Vol. 1, p. 67 (Stipulated Memorandum).

¹⁰ *Id.*

Pocatello Hospital LLC d/b/a Portneuf Medical Center (“PMC”) is a hospital located in Pocatello, Idaho.¹¹ Corizon often brings prisoners from PWCC to PMC for medical care.¹² PMC directly bills Corizon for medical care rendered to those prisoners.¹³

On January 1, 2011, Corizon and PMC entered into a Hospital Services Agreement (“HSA”).¹⁴ As part of the written agreement, Corizon engaged PMC to provide hospitalization and inpatient and outpatient medical care to prisoners within Corizon’s care.¹⁵ Under the HSA, Corizon agreed to pay PMC a contractual reimbursement rate (“HSA Rate”) for the medical care provided by PMC to the prisoners.¹⁶ Corizon paid the HSA Rate under the terms of the HSA. The HSA Rate was a discounted rate from PMC’s regular billing.

Corizon’s contract with IDOC was expiring. As a result, on July 30, 2013, IDOC issued a Request for Proposal (“RFP”).¹⁷ The RFP sought “an expert Contractor to provide healthcare, mental health, dental, vision, specialty care, and pharmaceutical services” to prisoners incarcerated within the State of Idaho’s correctional system.¹⁸ On September 30, 2013, Corizon submitted a proposal by sealed bid.¹⁹ Corizon’s proposal was accepted.²⁰ A new contract was executed between Corizon and IDOC, pursuant to which Corizon agreed to provide “Healthcare Services

¹¹ R. Vol. 1, p. 67 (Stipulated Memorandum).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ R. Vol. 2 & 3, pp. 432-652. *See also* R. Vol. 1, p. 64 (Stipulated Memorandum).

¹⁸ R. Vol. 2, p. 361. *See also* R. Vol. 1, p. 64 (Stipulated Memorandum).

¹⁹ R. Vol. 1 & 2, pp. 80-349 & 358-416. *See also* R. Vol. 1, p. 65 (Stipulated Memorandum).

²⁰ R. Vol. 1, p. 65 (Stipulated Memorandum).

for Adult Idaho Offenders for the Idaho Department of Correction.”²¹ The term of this new contract was from January 1, 2014, through December 31, 2018, with the option for two additional two-year extensions.²²

Corizon’s new contract with IDOC was “a full risk contract” pursuant to which IDOC paid Corizon a fixed amount for each covered inmate, and Corizon agreed to assume all responsibility, including all financial responsibility, for any medical care needed by the prisoners.²³ Specifically, under the new contract with IDOC, Corizon agreed that “[t]he contract resulting from this RFP to provide healthcare for Idaho Offenders is a full-risk contract” and that it would “be responsible for payment of all medical claims for Offenders” and to be “financially responsible for claims from subcontractors or other providers for services provided prior to contract expiration.”²⁴ Corizon also agreed to “be held responsible for the provision of healthcare as described herein, and to absorb costs through the duration of the contract and any renewal periods. [Corizon] is responsible for any and all agreements with local healthcare providers, pharmacies, specialists, et al; and for developing efficiencies and controlling costs.”²⁵ Corizon also agreed to

²¹ R. Vol. 2, p. 431 (IDOC Contract Purchase Order). *See also* R. Vol. 1, p. 65 (Stipulated Memorandum).

²² R. Vol. 2, p. 431 (IDOC Contract Purchase Order). *See also* R. Vol. 1, p. 65 (Stipulated Memorandum).

²³ R. Vol. 3, p. 452 (“The contract resulting from this RFP to provide healthcare for Idaho Offenders is a full-risk contract.”).

²⁴ R. Vol. 3, p. 452 & 520. *See also* R. Vol. 1, p. 65 (Stipulated Memorandum).

²⁵ R. Vol. 3, p. 452. *See also* R. Vol. 1, p. 65 (Stipulated Memorandum).

make “[a]ll payments to medical providers...within thirty (30) calendar days of the Contractor’s [i.e. Corizon’s] receipt of the invoice.”²⁶

On July 1, 2014, approximately six months after the initiation of Corizon’s new contract with IDOC, Corizon began reimbursing PMC at a rate equal to the Idaho Medicaid reimbursement rate instead of at the agreed upon HSA Rate.²⁷ The Idaho Medicaid reimbursement rate was far less than the HSA rate. PMC did not agree to a reduction of the contractual reimbursement rate. On September 29, 2015, Corizon provided written notice to PMC exercising its option to terminate the HSA without cause.²⁸ Pursuant thereto, the HSA terminated on December 31, 2015.²⁹

Since January 1, 2016, no contract has existed between Corizon and PMC with respect to the amount Corizon must pay to PMC for medical care rendered to prisoners.³⁰ Given the absence of a contract, it is PMC’s position that Corizon is now responsible to pay PMC’s normal billing without any discount. Notwithstanding, Corizon has continued to bring prisoners to PMC for medical care while refusing to pay more than the Idaho Medicaid reimbursement rate for the medical care provided by PMC.³¹

²⁶ R. Vol. 3, p. 520. *See also* R. Vol. 1, p. 65 (Stipulated Memorandum).

²⁷ R. Vol. 1, p. 67 (Stipulated Memorandum).

²⁸ R. Vol. 1, p. 68 (Stipulated Memorandum).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

III. Course of Proceedings

On January 20, 2016, PMC filed a complaint against Corizon in the United States District Court for the District of Idaho, asserting a cause of action for full payment of the HSA Rate for medical bills incurred prior to the expiration of the HSA Agreement on December 31, 2015.³² On August 25, 2016, PMC filed an amended complaint, adding a second cause of action for full payment of medical bills incurred on and after January 1, 2016.³³ On January 13, 2017, by stipulation of the parties, the first cause of action for full payment of the HSA Rate was dismissed with prejudice.³⁴

The second cause of action remains to be adjudicated. In its defense, Corizon has relied upon I.C. § 20-237B. Idaho Code § 20-237B(1) prohibits the “state board of correction” from paying “a provider of medical services” more than “the Idaho medicaid reimbursement rate” for medical services provided to prisoners (hereinafter “Medicaid Rate Limitation”). Idaho Code § 20-237B(2) eliminates the Medicaid Rate Limitation under two relevant circumstances. First, the Medicaid Rate Limitation is eliminated if the state board of correction’s payment is made to “a privatized correctional medical provider under contract with the department of correction to pro-

³² R. Vol. 1, pp. 1-6.

³³ R. Vol. 1, pp. 19-33.

³⁴ R. Vol. 1, pp. 57-59.

vide health care to prison inmates.” I.C. § 20-237B(2)(a).³⁵ And second, the Medicaid Rate Limitation is eliminated if the medical provider does not directly bill IDOC. I.C. § 20-237B(2).³⁶

Corizon claims that the terms “state board of correction” and “department of correction” as used in I.C. § 20-237B include privatized correctional medical providers under contract with IDOC. Based thereon, Corizon asserts that I.C. § 20-237B prohibits it, as a privatized correctional medical provider, from paying more than the Idaho Medicaid reimbursement rate for medical services provided by PMC to prisoners in Corizon’s care.

It is PMC’s position that the terms “state board of correction” and “department of correction” as used in I.C. § 20-237B do not include privatized correctional medical providers under contract with IDOC in light of the statutory definitions of those terms, the plain language of the relevant statutes, and the legislative history. It is also PMC’s position that the Medicaid Rate Limitation does not apply, because IDOC’s payment is made to Corizon as a privatized correctional provider and because PMC directly bills Corizon and not IDOC. *See* I.C. §§ 20-237B(2) & 20-237B(2)(a). Idaho Code § 20-237B only limits the amount IDOC may pay for inmate medical services that are billed directly to IDOC and does not limit what a privatized correctional medical provider like Corizon may pay for inmate medical services. Based thereon, it is PMC’s posi-

³⁵ Idaho Code § 20-237B(2)(a) eliminates the Medicaid Rate Limitation in this situation by excluding “privatized correctional medical providers under contract with the department of correction to provide health care to prison inmates” from the definition of “provider of medical services.”

³⁶ Idaho Code § 20-237B(2) eliminates the Medicaid Rate Limitation in this situation by defining “provider of medical services” as including “only companies, professional associations and other health care services entities whose services are billed directly to the department of correction.”

tion that the Medicaid Rate Limitation in I.C. § 20-237B does not apply under the circumstances of this case.

On February 17, 2017, PMC and Corizon jointly a motion to certify the question of law concerning the interpretation of I.C. § 20-237B to the Idaho Supreme Court.³⁷ In support of the motion to certify, the parties jointly filed a stipulated memorandum and an affidavit of counsel.³⁸ On June 13, 2017, PMC and Corizon jointly filed a revised motion to certify.³⁹ On June 30, 2017, the United States District Court entered its order certifying the question to the Idaho Supreme Court.⁴⁰ On August 10, 2017, the Idaho Supreme Court accepted certification and designated PMC as the Appellant and Corizon as the Respondent.

ISSUE PRESENTED ON APPEAL

The specific question certified by the Idaho Supreme Court is as follows:

1. Whether, for purposes of the dispute in this lawsuit, the terms “state board of correction” as used in Idaho Code § 20-237B(1) and “department of correction” as used in Idaho Code § 20-237B(2), include privatized correctional medical providers under contract with the Idaho Department of Correction?

³⁷ R. Vol. 1, pp. 60-61.

³⁸ R. Vol. 1, pp. 63-75 (Stipulated Memorandum); Vol. 1, p. 76 to R. Vol. 3, p. 658 (Affidavit of Counsel with Exhibits).

³⁹ R. Vol. 3, pp. 659-661.

⁴⁰ R. Vol. 3, pp. 662-670.

STANDARD OF REVIEW

I. Certified Question

“Courts of the United States may certify a controlling question of law in a pending action to the Idaho Supreme Court where there is no controlling precedent in Idaho Supreme Court decisions and the determination would materially advance the orderly resolution of the litigation in the United States court.” *Doe v. BSA*, 159 Idaho 103, 105, 356 P.3d 1049, 1051 (2015) (citing *St. Luke’s Magic Valley Reg’l Med. Ctr. v. Luciani*, 154 Idaho 37, 39-40, 293 P.3d 661, 663-64 (2013) and I.A.R. 12.3(a)). “This Court exercises free review over questions of law.” *Doe v. BSA*, 159 Idaho at 105, 356 P.3d at 1051 (citing *Harrigfeld v. Hancock*, 140 Idaho 134, 136, 90 P.3d 884, 886 (2004)).

II. Statutory Construction

This Court freely reviews the construction of a statute. *Gibson v. Ada Cnty.*, 142 Idaho 746, 751, 133 P.3d 1211, 1216 (2006). The interpretation of a statute is a question of law over which this Court exercises free review. *State v. Hensley*, 145 Idaho 852, 855, 187 P.3d 1227, 1230 (2008). “The statute is viewed as a whole, and the analysis begins with the language of the statute, which is given its plain, usual and ordinary meaning.” *BHC Intermountain Hosp., Inc. v. Ada County*, 150 Idaho 93, 95, 244 P.3d 237, 239 (2010). In determining the ordinary meaning of the statute, “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.” *Id.* (quoting *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006)). However, “[i]f the language of the statute is capable of more than one reasonable construction it is ambiguous,” and a statute that is ambiguous must be construed with legislative

intent in mind, which is ascertained by examining “not only the literal words of the statute, but the reasonableness of the proposed interpretations, the policy behind the statute, and its legislative history.” *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007).

ARGUMENT

I. Idaho Code § 20-237B and the statutory definitions of the terms “state board of correction” and “department of correction” are unambiguous and do not include privatized correctional medical providers under contract with IDOC.

Statutory construction “must begin with the literal words of the statute, giving them their plain, obvious, and rational meaning; those words must be given their plain, usual, and ordinary meaning, and the statute must be construed as a whole.” *James v. City of Boise*, 160 Idaho 466, 485, 376 P.3d 33, 52 (2016) (internal citations omitted). “Where a statute is unambiguous, statutory construction is unnecessary and courts are free to apply the plain meaning.” *Cowan v. Board of Commissioners*, 143 Idaho 501, 511, 148 P.3d 1247, 1257 (2006).

At issue is the interpretation of I.C. § 20-237B, which provides in its entirety the following with the terms at issue bolded:

MEDICAL COSTS OF STATE PRISONERS HOUSED IN CORRECTIONAL FACILITIES. (1) The **state board of correction** shall pay to a provider of a medical service for any and all prisoners, committed to the custody of the department of correction, confined in a correctional facility, as defined in section 18-101A(1), Idaho Code, an amount no greater than the reimbursement rate applicable based on the Idaho medicaid reimbursement rate. This limitation applies to all medical care services provided outside the facility, including hospitalizations, professional services, durable and nondurable goods, prescription drugs and medications provided to any and all prisoners confined in a correctional facility, as defined in section 18-101A(1), Idaho Code. For required services that are not included in the Idaho medicaid reimbursement schedule, the state board of correction shall pay the reasonable value of such service.

(2) For the purposes of subsection (1) of this section, the term “provider of a medical service” shall include only companies, professional associations and other health care service entities whose services are billed directly to the **department of correction**. The term “provider of a medical service” shall exclude:

- (a) Privatized correctional medical providers under contract with the **department of correction** to provide health care to prison inmates;
- (b) Private prison companies;
- (c) Out-of-state correctional facilities contracting with the **department of correction** to house prisoners;
- (d) County jails; and
- (e) Companies, professional associations and other health care service entities whose services are provided within the terms of agreements with privatized correctional medical providers under contract with the **department of correction**, private prison companies and county jails.

(Emphasis added).

A statute is ambiguous only when “the meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning.” *Farmers Nat’l Bank v. Green River Dairy, LLC*, 155 Idaho 853, 856, 318 P.3d 622, 625 (2014) (quoting *BHA Investments, Inc. v. City of Boise*, 138 Idaho 356, 358, 63 P.3d 482, 484 (2003)). “[A] statute is not ambiguous merely because an astute mind can devise more than one interpretation to it.” *Id.*

Here, there is no uncertainty as to the meaning of the terms “department of correction” and “state board of correction” as used in I.C. § 20-237B. These terms are statutorily defined. The term “state board of correction” is defined by I.C. § 20-201A as “a nonpartisan board of three (3) members to be known as the state board of correction...appointed by the governor to exercise the duties imposed by law.” The term “department of correction” is defined by I.C. § 20-201 as “consist[ing] of the board of correction and the commission of pardons and parole” and constituting “an executive department of the state government.”

These statutory definitions of the terms “department of correction” and “state board of correction” are unambiguous. “This court has also repeatedly recognized it to be a firmly established rule of statutory construction that legislative definitions of terms included within the statute, control and dictate the meaning of those terms as used in the statute.” *Roe v. Hopper*, 90 Idaho 22, 27, 408 P.2d 161, 164 (1965).⁴¹ Because the Idaho legislature has provided these statutory definitions for the terms “department of correction” and “state board of correction”, they control the meaning of these terms within I.C. § 20-237B. The statutory definitions of “state board of correction” and “department of correction” unambiguously do not include privatized correctional medical providers. The Idaho Supreme Court has “stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Mayer v. TPC Holdings, Inc.*, 160 Idaho 223, 227, 370 P.3d 738, 742 (2016) (quoting *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)).

When read as a whole in the context of Title 20, Chapter 2, of the Idaho Code and relying upon the appropriate statutory definitions, I.C. § 20-237B and the terms “state board of correc-

⁴¹ See also *Mayer v. TPC Holdings, Inc.*, 160 Idaho 223, 226, 370 P.3d 738, 741 (2016) (“Legislative definitions of terms included within a statute control and dictate the meaning of those terms as used in the statute.”); *State v. Yzaguirre*, 144 Idaho 471, 477, 163 P.3d 1183, 1189 (2007) (“Legislative definitions of terms included within a statute control and dictate the meaning of those terms as used in the statute.”); *White v. Mock*, 140 Idaho 882, 890, 104 P.3d 356, 364 (2004) (“Legislative definitions of terms included within a statute control and dictate the meaning of those terms as used in the statute.”); *Cameron v. Lakeland Class A Sch. Dist.*, 82 Idaho 375, 381, 353 P.2d 652, 655 (1960) (“It is a firmly established rule of statutory construction that definitions of terms included within the framework of a statute, control and dictate the meaning of those terms as used in the statute.”).

tion” and “department of correction” are unambiguous. Although Corizon may present a “possible interpretation” different from the statutory definitions, it would not make these statutes ambiguous. “[A]mbiguity is not established merely because different possible interpretations are presented to the court. If this were the case then all statutes that are the subject to litigation could be considered ambiguous.” *Farmers Nat’l Bank*, 155 Idaho at 856, 318 P.3d at 625 (quoting *BHA Investments, Inc.*, 138 Idaho at 358, 63 P.3d at 484).

Because I.C. § 20-237B and the terms “state board of correction” and “department of correction” used therein are unambiguous, “canons of construction and legislative history are irrelevant to this Court’s determination in this case.” *Farmers Nat’l Bank*, 155 Idaho at 858, 318 P.3d at 627. Because the statutory definitions unambiguously do not include privatized correctional medical providers, the terms “state board of correction” as used in I.C. § 20-237B(1) and “department of correction” as used in Idaho Code § 20-237B(2) do not include privatized correctional medical providers under contract with IDOC.

II. Even if Idaho Code § 20-237B and the statutory definitions of the terms “state board of correction” and “department of correction” are considered ambiguous, canons of construction and legislative history reveal that the Idaho legislature did not intend for the terms “state board of correction” and “department of correction” to include privatized correctional medical providers under contract with IDOC.

It is PMC’s position that I.C. § 20-237B and the statutory definitions of the terms “state board of correction” and “department of correction” are unambiguous and do not include privatized correctional medical providers. However, “[i]f the statute is ambiguous, then it must be construed to mean what the legislature intended for it to mean.” *J & M Cattle Co., Ltd. Liab. Co. v. Farmers Nat’l Bank*, 156 Idaho 690, 694, 330 P.3d 1048, 1052 (2014). The Court determines

legislative intent by examining “not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.” *Id.* As discussed below, this examination reveals that the Idaho legislature did not intend for the terms “state board of correction” and “department of correction” as used in I.C. § 20-237B to include privatized correctional medical providers under contract with IDOC.

A. Idaho Code § 20-237B itself differentiates between the terms “state board of correction” and “department of correction” (on the one hand) and the term “privatized correctional medical providers” (on the other hand).

When a statute by its own language differentiates and distinguishes two terms, the only reasonable conclusion is that those two terms have separate and different meanings and that one is not included in the definition of the other. The Idaho Supreme Court has applied this principle on numerous occasions.

In *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007), the Idaho Supreme Court interpreted I.C. § 67-2345(1), which at that time provided: “The governing body of a public agency shall provide for the taking of written minutes of all meetings. Neither a full transcript nor a recording of the meeting is required....” *Id.* at 477, 163 P.3d at 1189. In determining whether “written minutes” included “recordings,” the Idaho Supreme Court noted that the statute itself “distinguish[ed] recording from taking minutes” and therefore precluded one from being included in the definition of the other. *Id.* at 477-78, 163 P.3d at 1189-90.

In *Farm Bureau Mut. Ins. Co. v. Schrock*, 150 Idaho 817, 823, 252 P.3d 98, 104 (2011), the Idaho Supreme Court interpreted I.C. § 49-1212(6), which provided: “Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful cover-

age in excess of or in addition to the coverage specified for a motor vehicle liability policy, and any excess or additional coverage shall not be subject to the provisions of this chapter.” *Id.* at 823, 252 P.3d at 104. In determining whether the term “motor vehicle liability policy” included excess and supplemental policies, the Idaho Supreme Court noted that the statute itself “distinguishes motor vehicle liability policies from excess supplemental policies” and therefore precluded one from being included in the definition of the other. *Id.*

In *Safe Air For Everyone v. Idaho State Dep’t of Agric.*, 145 Idaho 164, 177 P.3d 378 (2008), the Idaho Supreme Court interpreted I.C. § 59-513, which provided: “The governing body of any county, city, or political subdivision of the state, shall supervise and regulate the deferred compensation program for its employees.” *Id.* at 167, 177 P.3d at 381. In determining whether the term “governing body” included “employees,” the Idaho Supreme Court noted that the statute itself “distinguished between the ‘governing body’ and the ‘employees’” and therefore precluded one from being included in the definition of the other. *Id.*

The language of I.C. § 20-237B clearly differentiates and distinguishes between the terms “state board of correction” and “department of correction” (on the one hand) and the term “privatized correctional medical providers” (on the other hand). For example, I.C. § 20-237B(2) (a) provides: “The term ‘provider of a medical service’ shall exclude...Privatized correctional medical providers under contract with the department of correction to provide health care to prison inmates.” (Underline added). As used in this statute, these two terms are distinguished, have differing meanings, and cannot be included in the meaning of the other. Replacement of one term for the other would make the statute unintelligible and negate the clear intent of the legislature.

“Under such circumstances the substitution of words...would distort the definition of the word[s]...and do violence to the common understanding of the language used by the legislature.” *Roe*, 90 Idaho at 27, 408 P.2d at 164. This is true for all uses throughout I.C. § 20-237B of the terms “state board of correction” and “department of correction” (on the one hand) and the term “privatized correctional medical providers” (on the other hand).

Because I.C. § 20-237B itself distinguishes and differentiates between the terms “state board of correction” and “department of correction” (on the one hand) and the term “privatized correctional medical providers” (on the other hand), the terms “board of correction” and “department of correction” as used in I.C. § 20-237B cannot include privatized correctional medical providers under contract with IDOC.

B. The “billed directly” language from I.C. § 20-237B(2) indicates a clear distinction and differentiation between the “department of correction” and “privatized correctional medical providers.”

Idaho Code § 20-237B(2) defines the term “provider of a medical service” as including “only companies, professional associations and other health care service entities whose services are billed directly to the department of correction.” (Underline added). The underlined phrase is a clear indication that medical providers (such as PMC) might be sending medical bills directly to IDOC or alternatively to a third party like a privatized correctional medical provider (such as Corizon). This underlined phrase makes it clear that the Medicaid Rate Limitation from I.C. § 20-237B only applies when the medical provider is sending its bills directly to IDOC and that it does not apply when the bills are sent directly to a third party like a privatized correctional medical provider.

This underlined phrase is a legislative recognition of the difference between the “department of correction” and a third party like a privatized correctional medical provider. If there were no difference, there would have been no reason for the legislature to include the underlined phrase in I.C. § 20-237B(2). If the term “department of correction” included privatized correctional medical providers, it would render the underline phrase superfluous. “[A] statute must be construed so that effect is given to its provisions, and no part is rendered superfluous or insignificant.” *Hoskins v. Howard*, 132 Idaho 311, 315, 971 P.2d 1135, 1139 (1998). For this additional reason, a privatized correctional medical provider is not within the definition of the terms “department of correction” or “state board of correction” as used in I.C. § 20-237B.

C. Legislative history reveals the legislature’s intent to not include privatized correctional medical providers in the terms “state board of correction” and “department of correction” as used in I.C. § 20-237B.

The legislative history clearly shows that the legislature did not intend for those terms to include privatized correctional medical providers. Idaho Code § 20-237B was newly enacted in 2005. The Statement of Purpose for Idaho Code § 20-237B, as set forth in 2005 Idaho Session Laws 157 (S.B. 1036), provides in its entirety the following:

The Department of Correction provides health care to inmates in accordance with Eighth Amendment standards that apply to health care for prisoners. Currently, said health care services are provided via contractual agreements with privatized correctional health care companies, private prison companies, county jails and entities who have agreements to provide health care services to county jails. The contract with the privatized health care company accounts for approximately eighty percent of the Department’s costs for inmate health care.

The annual cost of providing health care to inmates via the contract with the privatized health care company has increased during the past four years from approximately nine million dollars to thirteen million dollars. The contract requires

the company to assume all financial risk for providing the required health care. The current contract expires September 30, 2005, and the Department will issue a new contract, to begin October 1, 2005. Due to the rapid increase in the cost of health care, it is anticipated that to obtain a similar total risk contract, the Department's costs will be much greater than the current costs.

To provide maximum cost-efficiency, the Department's Request for Proposal includes four options for prospective vendors to bid:

1. Total risk to the vendor. All costs are paid by the vendor.
2. Total risk to the vendor, with the exception of medications utilized to treat Hepatitis C. These medications cost approximately \$ 15,000 per treatment, and the Department currently houses approximately 570 inmates who have been diagnosed with Hepatitis C. The number of inmates who will eventually qualify for treatment is unknown.
3. Catastrophic Care cap. This option requires the vendor to pay up to \$ 50,000 for hospitalization, specialty care and off-site outpatient care per inmate. All costs above the cap will be paid by the Department of Correction.
4. Aggregated cap. This option creates a pool of funds to be used for hospitalizations, emergency services, and off-site care. Terms of the pool are negotiable, and include contributions by the vendor and the Department.

It is anticipated that the final contract will include some form of uncontrollable financial risk to the Department. To ameliorate the risk, the current legislation is intended to limit the Department's exposure to the same level of risk assumed by the State of Idaho for providing health care to indigent citizens via Medicaid. Without this legislation, the Department's risk will be an unpredictable variable determined unilaterally by the respective health care providers.

This Statement of Purpose clarifies the purpose behind the legislature's enactment of I.C. § 20-237B in 2005. The legislature noted in the Statement of Purpose that the then-existing contract with Corizon "require[d] the company to assume all financial risk for providing the required health care" to prisoners (i.e. a total-risk contract). However, because the total-risk contract with Corizon was expiring, the legislature was concerned about the possibility that the new contract would not be a total-risk contract. The legislature "anticipated" that, under the new contract, the

vendor would assume only partial financial risk for prisoner health care and would require IDOC to pay for prisoner health care not assumed by the vendor. Not surprisingly, the legislature was concerned that “the Department’s exposure” for any financial risk for prisoner health care not assumed by the vendor would be “uncontrollable” and “unpredictabl[y] variable.” By enacting I.C. § 20-237B, the legislature sought to “limit the Department’s exposure” for any prisoner health care not assumed by the vendor under the new contract. In other words, the legislature intended for the Medicaid Rate Limitation in I.C. § 20-237B to apply only to medical bills that IDOC might be required to directly pay in the absence of a total-risk contract.

The language of I.C. § 20-237B achieves this legislative intent. Idaho Code § 20-237B(1) provides: “The state board of correction shall pay to a provider of medical service...an amount no greater than...the Idaho medicaid reimbursement rate.” (Underline added). Idaho Code § 20-237B(2) defines “provider of a medical service” as including “only companies, professional associations and other health care service entities whose services are billed directly to the department of correction.” (Underline added). If this definition and underlined phrase is placed into I.C. § 20-237B(1), it then reads: “The state board of correction shall pay to a provider of medical service whose services are billed directly to the department of correction...an amount no greater than...the Idaho medicaid reimbursement rate.”

It is abundantly clear from the Statement of Purpose and the language of the statute itself that the Medicaid Rate Limitation was intended by the legislature to apply only to medical bills submitted directly to and paid directly by IDOC in the absence of a total-risk contract. There is no other reasonable interpretation of the Statement of Purpose and the statute itself.

Notably, the legislature's concern in 2005 that IDOC would be unable to obtain a full-risk contract did not occur. IDOC's contracts with Corizon entered in 2005 (effective October 1, 2005) and later in 2013 (effective January 1, 2014) were both full-risk contracts pursuant to which Corizon agreed to accept the full financial risk and responsibility for all prisoner health care. Since the enactment of I.C. § 20-237B, all medical bills for prisoner health care rendered by providers such as PMC have been billed directly to and paid directly by Corizon.⁴² Since the enactment of I.C. § 20-237B, medical bills have not been sent directly to or paid directly by IDOC.⁴³ The Medicaid Rate Limitation has had no legal application since the enactment of I.C. § 20-237B in 2005, because IDOC has not yet been exposed to paying medical bills not assumed by a privatized correctional medical provider. (This might explain why Corizon did not attempt limit its payments to the Medicaid Rate Limitation for the first nine (9) years after the enactment of I.C. § 20-237B in 2005.)

The legislative history for I.C. § 20-237B, as expressed in its Statement of Purpose, clearly indicates that the legislature intended for the Medicaid Rate Limitation to apply only to medical bills that IDOC might have to directly pay if the health care vendor did not accept a total-risk contract. Construing the terms "state board of correction" and "department of correction" as including privatized correctional medical providers for purposes of I.C. § 20-237B would improv-

⁴² R. Vol. 1, p. 67 (Stipulated Memorandum: "PMC bills Corizon for medical care rendered to those prisoners."). *See also* R. Vol. 1, p. 65 (Stipulated Memorandum: "Corizon agreed to 'be responsible for all medical claims'...and to be 'financially responsible for claims from subcontractors or other providers for services provided...' and to 'make '[a]ll payments to medical providers...'").

⁴³ *Id.*

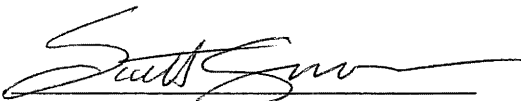
erly expand the applicability of the Medicaid Rate Limitation far beyond and in contradiction of the legislative intent. For this additional reason, the term “state board of correction” as used in I.C. § 20-237B(1) and “department of correction” as used in I.C. § 20-237B(2) do not include privatized correctional medical providers under contract with IDOC.

CONCLUSION

For the reasons discussed above, it is respectfully requested that the Idaho Supreme Court answer the certified question of law by holding that that terms “state board of correction” as used in I.C. § 20-237B(1) and “department of correction” as used in I.C. § 20-237B(2) do not include privatized correctional medical providers under contract with IDOC.

DATED this 13th day of September 2017.

RACINE OLSON NYE & BUDGE, CHARTERED

By: 
SCOTT J. SMITH
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of September 2017, I served two true and correct copies of the above and foregoing document to the following person(s) as follows:

John J. Burke (ISB #4619)
ELAM & BURKE P.A.
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
Email: jjb@elamburke.com
Attorneys for Respondent


SCOTT J. SMITH