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1 CONN. GEN. STAT. ANN. §§ 38a-815, 42-110a (West 2012). Section 38a-815 provides in relevant part: "No person shall engage in ... any trade practice which is defined ... or determined ... to [be] an unfair method of competition or an unfair or deceptive act or practice in the business of insurance ...." Id. Section 42-110a provides definitions related to unfair trade practices in the General Statutes of Connecticut. Section 42-110a provides in part:

As used in this chapter ... (3) "Person" means a natural person, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, and any other legal entity; (4) "Trade" and "commerce" means the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any service and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state.

Id.

2 CONN. GEN. STAT. ANN. § 38a-816(10) (West 2012) (creating regulatory scheme for unfair and deceptive practices in insurance business). Subsection 10 provides in part:

The following are defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance .... (10)
Supreme Court of Connecticut considered whether reimbursing individual podiatrists at a lesser rate than medical doctors for identical procedures amounts to unfair discrimination, violating CUIPA and CUTPA. The court held that although the legislative histories of the statutes suggest the intention to prevent unfair discrimination, ultimately the protection afforded by subsection 10 is limited to denials of reimbursement, not reimbursement rates. As a result, the court held that the practice of reimbursing individual podiatrists at a lower rate did not constitute unfair discrimination within the meaning of the statute.

Health Net of Connecticut, Inc. ("Health Net") is a health insurance provider that offers coverage for a variety of medical services. Health Net enters into contracts with physicians, hospitals, and other providers for products, such as preferred organization plans. Health Net provides managed health care services to over five million Americans through health plans and government-sponsored managed care plans.

Id.

3 28 A.3d 958 (Conn. 2011).

4 Id. at 960 (setting forth the issue before the court). The court defines "unfair discrimination" as used in § 38a-816(10), as the "failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored." Id. at 966 (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)). However, the court concluded that this broad definition did not resolve whether subsection 10 prohibits discriminatory rate setting. Id.

5 Id. at 969 (determining that different reimbursement rates do not fall within the term "unfair discrimination" under subsection 10).

6 Conn. Podiatric, 28 A.3d at 961 (concluding that unfair discrimination based on licensure is limited to denials of reimbursement).

7 Id. (describing Health Net's business). Health Net provides managed health care services to over five million Americans through health plans and government-sponsored managed care plans. Corporate Profile, HEALTH NET, http://investor.health.net/phoenix.zhtml?pc=70296&p=irol-irhome (last visited Mar. 29, 2013). Health Net contracts with physicians, hospitals, and other providers for products, such as preferred organization plans. Health Net Inc (HNT) Details, BLOOMBERG BUSINESSWEEK, http://investing.businessweek.com/research/stocks/snapshot/snapshot.asp?ticker=HNT (last visited Mar. 29, 2013). The company also offers other products including commercial health care products, point of service plans, Medicare coverage, Medicaid related products, indemnity insurance products, and auxiliary non-health products. Id. Additionally, Health Net provides administrative services, medical and disease management, and behavioral health and employee assistance programs. Id.; Health Net Inc., BLOOMBERG.COM,
with many health care professional across the United States including individual podiatrists licensed to practice in Connecticut. Through such contracts, individual podiatrists offer podiatric care to patients who receive Health Net's insurance coverage. Each service performed by the individual podiatrists has a corresponding current procedural terminology code ("CPT code"). Health Net designates a set amount of reimbursement for each service, based on the corresponding CPT code. To receive reimbursement for services provided, the individual podiatrists submit the designated CPT codes to Health Net, and Health Net subsequently reimburses the individual podiatrists the appropriate fixed amount.

Health Net also enters into contracts with medical doctors licensed to practice in Connecticut for providing the same, or similar, services. Similar to individual

8 Conn. Podiatric, 28 A.3d at 961 (describing that Health Net, as an insurance provider, contracts with individual podiatrists); see supra note 7 and accompanying text.
9 Conn. Podiatric, 28 A.3d at 961 (explaining that individual podiatrists provide care to those insured by Health Net).
10 Id. (describing the method by which Health Net identifies individual services). CPT codes are a uniform set of numbers that medical professionals indicate on insurance forms to describe the services provided to a patient. Zimmerman's Research Guide, Current Procedural Terminology (CPT) Codes, https://law.lexisnexis.com/infopro/zimmermans/disp.aspx?z=1367 (last visited Mar. 29, 2013). Insurers then use the CPT codes to determine the amount of reimbursement owed to the medical professional. Claim Modifiers: What Are They and How Do They Affect Me, FAIR HEALTH CONSUMER COST LOOKUP, http://www.fairhealthconsumer.org/reimbursementseries/claim_modifiers.aspx (last visited Mar. 29, 2013). Every medical practitioner uses the same codes to mean the same thing so as to communicate uniform information about medical services and procedures among the medical community. Id. Health Net reimburses the individual podiatrists a certain amount of money depending on the code identified. Conn. Podiatric, 28 A.3d at 961.
11 Id.
12 Id.
podiatrists, medical doctors provide medical care to patients who are Health Net members and submit designated CPT codes to Health Net in order to receive reimbursement. In certain circumstances, medical doctors and individual podiatrists who administer foot or ankle care to a patient submit the same CPT codes to indicate the same services performed. Health Net, however, typically administers higher reimbursement rates to medical doctors than those administered to podiatrists for identical procedures.

Podiatrists Jeffery F. Yale, Anthony R. Iorio, and R. Daniel Davis ("Podiatrists"), and the Connecticut Podiatric Medical Association ("Association") argued that Health Net’s practice of reimbursing medical doctors at a higher rate than podiatrists for identical services is considered unfair discrimination in violation of CUTPA and CUIPA. The Podiatrists and Association filed their claim with the Superior Court in the District of Waterbury, Connecticut seeking both monetary damages and injunctive relief. The trial court granted Health Net’s motion to dismiss the monetary claims, as well as Health Net’s motion for summary judgment concluding that reimbursing medical doctors at a higher rate than podiatrists for identical services did not violate the anti-discrimination protections of subsection 10. On appeal, the

must have completed medical school, completed at least two years of post-graduate residency training, and passed a licensing examination. CONN. GEN. STAT. ANN. § 20-10. In contrast, individuals seeking licensure as a DPM within the State of Connecticut must have received a DPM degree from an accredited podiatry school and must have completed two years of pre-podiatry science coursework. Id. §20-54. Podiatric medicine is a branch of the medical services that is primarily focused on providing care for the foot and ankle. What is a Podiatrist?, APMA: American Podiatric Medical Association, http://www.apma.org/learn/content.cfm?ItemNumber=992&navItemNumber=558 (last visited Mar. 29, 2013). Podiatrists receive their DPM from one of eight accredited schools of podiatric medicine, and complete two to three years of residency post-graduate. Id. Despite the inherent differences in the degrees and licensure requirements, DPMs and MDs often provide similar services so that the two groups compete against each other for certain patients. Podiatrist Ass’n, Inc. v. La Cruz Azul de Puerto Rico, Inc., 332 F.3d 6, 9 (1st Cir. 2003) (concerning health care providers allegedly engaged in unfair business practices in violation of Lanham Act).

14 Conn. Podiatric Med. Ass’n, Inc. v. Health Net of Conn., 28 A.3d 958, 961 (illustrating that the relationships between Health Net and podiatrists and Health Net and doctors are similar).
15 Id.
16 Id.
17 Id. at 962
18 Conn. Podiatric Med. Ass’n v. Health Net of Conn., Inc., 2008 WL 2502553, at *2 (Conn. Super. Ct. June 6, 2008). The plaintiffs sought a temporary and permanent injunction, monetary damages, punitive damages, attorney’s fees and interest, as well as any other fees accessible through the court. Id.
19 Id. at *10. The trial court dismissed the monetary claims because the Association did not have
Supreme Court of Connecticut affirmed the trial court’s decision holding that the protection against unfair discrimination found under subsection 10 is limited to denials of reimbursement, and therefore, did not apply to discriminating reimbursement rates.

Plaintiffs filing suit in Connecticut may rely on any one of four predominant theories of unfair and deceptive acts or practices when bringing a cause of action against insurers. Of the four theories, one violation involves CUTPA and another involves CUIPA, which differ in their origin and function. Adopted in 1973, CUTPA was modeled after the Federal Trade Commission Act to provide consumer protection against unfair and deceptive trade practices. By applying the standard set forth by the
Federal Trade Commission Act, the Supreme Court of Connecticut has held that acts are unfair if they: (1) come close enough to legally prohibited acts to violate established public policy; (2) are “immoral, unethical, oppressive, or unscrupulous”; or (3) cause substantial injury to the consuming public (the “Cigarette Rule”).24 In contrast, CUTPA,

24 FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244 n.5 (1972) (quoting Statement of Basis and Purpose of Trade Regulation Rule 408, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed.Reg. 8355 (1964) (codified at 16 C.F.R. pt. 13); see, e.g., FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 245-46 (1972) (setting standard for unfair or deceptive acts and practices); Votto v. Am. Car Rental, Inc., 871 A.2d 981, 984-85 (Conn. 2005); Cheshire Mortg. Serv., Inc. v. Montes, 612 A.2d 1130, 1143 (Conn. 1992); Sportsmen’s Boating Corp. v. Hensley, 474 A.2d 780, 786 (Conn. 1984); McLaughlin Ford, Inc. v. Ford Motor Co., 473 A.2d 1185, 1191 (Conn. 1984). In Cheshire Mortgage Service, the Connecticut Supreme Court held that the first criterion of the “Cigarette Rule” considers “whether the unfair practice . . . offends public policy to the extent that it constitutes a breach of established concepts of unfairness.” 612 A.2d at 1143 (quoting Web Press Servs. Corp. v. New London Motors, Inc. 525 A.2d 57, 65 (Conn. 2002)). For the second prong of the “Cigarette Rule,” the Connecticut Supreme Court has held that a trade or practice may be deemed “immoral, unethical, oppressive, or unscrupulous” where it is undertaken to maximize the defendant’s profit at the expense of the plaintiff’s rights. Votto, 871 A.2d at 985. Finally, in McLaughlin Ford, the Supreme Court of Connecticut set forth a three part test for the third criterion of the Cigarette Rule. 473 A.2d at 1191-92. To determine whether the act or practice “cause[d] substantial injury to the consumers, competitors, or other business persons the injury must be: 1) substantial; 2) not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and 3) an injury that the consumers themselves could not reasonably have avoided.” Id. To satisfy the third criterion, all three elements must be satisfied. Id. However, “all three criteria [of the Cigarette Rule] do not need to be satisfied to support a finding of unfairness.” Thames River Recycling, Inc. v. Gallo, 720 A.2d 242 (Conn. App. Ct. 1998); see Callandro v. Allstate Ins. Co., 778 A.2d 212, 216 (Conn. App. Ct. 2001). Instead, “[i]t is within the trier’s province to weigh the CUTPA factors as it sees fit.” Callandro, 778 A.2d at 220. In addition, the Supreme Court of Connecticut, following a standard established by the Federal Trade Commission, has adopted a separate test for determining whether an act or practice is “deceptive.” See Caldor v. Heslin, 577 A.2d 1009, 1013 (Conn. 1990). Under this test, there must be: (1) a “misrepresentation, omission or other practice likely to mislead consumers;” (2) “the consumers must interpret the act, omission, or statement reasonable under the circumstances;” and (3) “the misleading representation, omission, or practice must be material—that is, likely to affect consumer decisions or conduct.” Id. (quoting In re Figgie Int’l, Inc., 107 F.T.C. 313, 374 (1986)).
originally adopted in 1955, is based on a model act developed by the National Association Insurance Commission ("NAIC") and is oriented towards the insurance industry. Ultimately, however, both CUTPA and CUIPA provide protection against unfair acts or practices.

Under Section 38a-816, the Unfair Practices Defined provision, CUIPA provides a list of prohibited trade practices including: misrepresentations and false advertising, defamation, coercion, false financial statements, unfair claims settlement

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25 Bethany DiMarzio, Standards for Pleading a Claim Under CUIPA: No Exceptions to the Connecticut Fact Pleading Requirement, 18 CONN. INS. L.J. 559, 563-64 (2012); see also CONN. GEN. STAT. ANN. § 38a-816 (West 2012) (noting CUIPA's enactment in 1955). The National Association of Insurance Commissioners is a "standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories." See About the NAIC, NAT'L ASSN. OF INS. COMM'RS AND THE CTR FOR INS. POL'Y AND RES., http://www.naic.org/index_about.htm (last visited Mar. 29, 2013). State insurance regulators "establish standards and best practices, conduct peer review, and coordinate their regulatory oversight" through the NAIC. Id. In 1944, the United States Supreme Court held that under the commerce clause "Congress had authority . . . to regulate interstate insurance transactions." See Mead v. Burns, 509 A.2d 11, 16 (Conn. 1986) (citing United States v. South-Eastern Underwriters Assn., 322 U.S. 533, 546 (1944)). Because of the likely result that the Federal Trade Commission would have regulatory control over insurance practices, Congress enacted the McCarran-Ferguson Act, codified at 15 U.S.C. § 1012, which authorized federal regulation only to "the extent that such business is not regulated by State Law." Id. Therefore, in 1947, the NAIC "promulgated a model insurance trade practices act to assure continued state supervision of the insurance industry." Id. Subsequently, CUIPA was enacted in 1955. Id. Originally codified at §§ 38-60 to 38-64, CUIPA, under the General Statutes of Connecticut §§ 38a-815 to 38a-819, forbids any person engaged in the business of insurance in Connecticut from engaging in "any unfair method of competition, or in any unfair or deceptive act or practice prohibited by section 38-60 to 38-64, inclusive." Conn. Gen. Stat. Ann. §§ 38a-815-19 (West 2012); see also Mead, 509 A.2d at 15.

26 See Mead, 509 A.2d at 18. In Mead, the Supreme Court of Connecticut considered whether the insurance industry could be regulated by CUIPA and CUTPA concurrently. Id. at 17. The plaintiff argued that CUIPA did not have sole regulatory power over the insurance industry. Id. To support this argument, the plaintiff relied on the statutory history of CUIPA and CUPTA. Id. The plaintiff argues that § 38-62(d) of CUIPA provides: "No order of the commissioner under sections 38-60 to 38-64, inclusive shall relieve or absolve any person affected by such order from any liability under any other laws of this state." Id. Meanwhile, CUTPA, § 42-110b(a) provides that "[n]o person shall engage in . . . unfair or deceptive acts or practices in the conduct of any trade or commerce" and § 42-110(c), states: "Nothing in this chapter shall apply to: (1) Transactions or actions otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of the United States." Id. Ultimately, the court held that these statutory provisions support that both CUIPA and CUTPA have the authority to regulate insurance practices in Connecticut. See Mead, 509 A.2d at 17 (stating that "the legislature elected to subject insurance companies to multiple rather than singular regulatory supervision").
practices, and violations of anti-discrimination statutes. Specifically, subsection 10 of this provision protects "practitioners of the healing arts" against unfair discrimination. To better understand the language of the subsection, it may be divided into four clauses. The first clause establishes that private parties may not contract around the requirements set forth in the subsection. The second clause establishes that the subsection applies whenever an insurance policy or contract provides for the reimbursement of medical services. The third clause expressly states that a policy or service contract will not be denied because of unfair discrimination. Finally, the fourth clause prohibits insurers from making or permitting discrimination that is unfair. The

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27 CONN. GEN. STAT. ANN. § 38a-816 (West 2012).
28 CONN. GEN. STAT. ANN. § 38a-816(10) (West 2012). This statute states:

Notwithstanding any provision of any policy of insurance, certificate or service contract, whenever such insurance policy or certificate or service contract provides for reimbursement for any services which may be legally performed by any practitioner of the healing arts licensed to practice in this state, reimbursement under such insurance policy, certificate or service contract shall not be denied because of race, color or creed nor shall any insurer make or permit any unfair discrimination against particular individuals or persons so licensed.

Id. The "practice of the healing arts" is defined as "the practice of medicine, chiropractic, podiatry, natureopathy ..." CONN. GEN. STAT. ANN. § 20-1 (West 2012) (emphasis added).

29 CONN. GEN. STAT. ANN. § 38a-816(10) (West 2012).
30 Id. The statute states in relevant part: "notwithstanding any provision of any policy of insurance, certificate or service contract." Id.
31 Id. ("Whenever such insurance policy or certificate or service contract provides for reimbursement for any services which may be legally performed by any practitioner of the healing arts licensed to practice in [Connecticut]").
32 Id. (providing "such insurance policy, certificate or service contract shall not be denied because of race, color or creed").
33 Id. (stating "nor shall any insurer make or permit any unfair discrimination against particular individuals or persons so licensed"). There has been long standing conflict between medical doctors and other health care professionals. See, e.g., Bhan v. NME Hosp., Inc., 929 F.2d 1404 (9th Cir. 1991); Va. Acad. of Clinical Psychologists v. Blue Shield, 624 F.2d 476 (4th Cir. 1980). In Bhan v. NME Hosp., a registered nurse anesthetist argued the defendant hospital was in violation of the Sherman Act for refusing to use non-physician anesthesia providers. Bhan, 929 F.2d at 1407. As a certified registered nurse anesthetist, the plaintiff was licensed to perform many of the same anesthesia services as physician anesthesia providers. Id. However, the defendant hospital implemented a policy that excluded the use of non-physicians. Id. at 1408. Similarly, in Va. Acad. of Clinical Psychologists v. Blue Shield, health care providers refused to pay for services rendered by clinical psychologists unless those services were billed through a physician. Va. Acad. of Clinical Psychologists, 624 F.2d at 478. More interestingly, in many circumstances podiatrists have been the medical professionals fighting to receive the same treatment as medical
fourth clause is silent as to whom the protection of this clause extends to, or whether prohibition against unfair discrimination encompasses all aspects of reimbursement or merely denials of reimbursement.  


34 CONN. GEN. STAT. ANN. § 38a-816(10) (West 2012). In determining statutory interpretation, the court should follow the plain meaning rule set forth in the General Statutes of Connecticut §1-2z (“§1-2z”). Id. § 1-2z; see also Hartford/Windsor Healthcare Prop., LLC v. City of Hartford, 3 A.3d 56, 61 (Conn. 2010). Section 1-2z establishes that the court should first consider the text of the statute and its relationship to other statutes. See CONN. GEN. STAT. ANN. §1-2z. If the meaning of the text is “plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” Hartford, 3 A.3d at 61. The statute further provides that “words and phrases shall be construed according to the commonly approved usage of the language.” Id. at 62. However, when the language is ambiguous, the court should consult extratextual sources to determine the legislature’s intent. Id. at 61, 63. A statute is ambiguous if, “when read in context, it is susceptible to more than one reasonable interpretation.” Id. at 61. In addition, “it is a basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions.” Lopa v. Brinker Int’l, Inc., 994 A.2d 1265, 1269 (2010) (internal quotation marks omitted) (quoting PJM & Assoc., LC v. City of Bridgeport, 971 A.2d 24, 32 (2009)). In construing statutes “we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous.” Id. Additionally, “silence does not necessarily equate to ambiguity.” Hartford, 3 A.3d at 61. Furthermore, “when a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject … is significant to show that a different intention existed.” Asylum Hill Problem Solving Revitalization Assn. v. King, 890 A.2d 522, 533 (2006). Although there remains very little evidence in the legislative history regarding discrimination in denials of reimbursement, related provisions throughout Title 38(a) provide additional information on the topic of discrimination. See generally CONN. GEN. STAT. ANN § tit. 38a. For example, in § 38a-481(b), the insurance commissioner may impose regulations to ensure that rates set for individual health insurance policies are not “excessive, inadequate, or unfairly discriminatory.” Id. § 38a-481(b). In addition, the commissioner may refuse approval rates schedule which health care centers, insurance companies, and medical corporations are required to file, if the rates are found “to be excessive, inadequate, or discriminatory.” Id. §§ 38a-183(a), 208, 218, 236. Furthermore, General Statutes § 38a-488 provides: “Discrimination between individuals of the same class in the amount of premiums or rates charged for any individual health insurance policy, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner, is prohibited.” Id. § 38a-488. Under General Statutes § 38a-505(b), “[t]he commissioner shall
The legislature added subsection 10 to CUIPA in 1967 for the purpose of preventing unfair discrimination against chiropractors licensed to practice in Connecticut pursuant to Chapter 372 of the General Statutes of Connecticut.\textsuperscript{35}

Adopt regulations . . . that specify prohibited policy provisions not otherwise specifically authorized by statute which in the opinion of the commissioner are unjust, unfair, or unfairly discriminatory . . .” \textit{Id.} § 38a-505(b). As related to the health reinsurance association, General Statutes § 38a-556(c)(3) provides that “[r]ates for coverage issued by or through the association shall not be excessive, inadequate or unfairly discriminatory.” \textit{Id.} § 38a-556(c)(3). Furthermore, the commissioner may refuse approval for a schedule of charges for enrollee coverage for dental services if the commissioner finds the rates to be “unfairly discriminatory.” \textit{Id.} § 38a-582(a). Additionally, other statutes in the insurance chapter of the General Statutes of Connecticut specifically address discriminatory rate settings. \textit{See}, e.g., \textit{id.} §§ 38a-236, 418(a), 481(b), 582. For example, § 38a-236 provides in relevant part:

No nonprofit legal service corporation, as defined in section 38a-230, shall enter into any contract with subscribers unless and until it has filed with the . . . commissioner a full schedule of the rates to be paid by the subscriber and has obtained said commissioner’s approval thereof. The commissioner may refuse such approval if he finds such rates are excessive, or unfairly discriminatory.

\textit{Id.} § 38a-236. General Statutes §38a-418(a), which sets standards for premium rates, expressly provides that such rates “shall not be inadequate, excessive, or unfairly discriminatory.” \textit{Id.} § 38a-418(a). Section 38a-481(b) establishes procedures for approval of individual health insurance policies and requires the commissioner to adopt regulations to set standards to ensure that the rates set in such policies “shall not be excessive, inadequate or unfairly discriminatory.” \textit{Id.} § 38a-481(b); \textit{see also id.} § 38a-582 (noting commissioner may disapprove schedule of charges for enrollee coverage for dental services if commissioner finds that charges are “excessive, inadequate or unfairly discriminatory”); \textit{Id.} (prohibiting “unfair discrimination” in setting rates for life insurance premiums in fraternal benefit societies); \textit{Id.} § 38a-665(a) (providing rates for commercial risk insurance may not be “excessive or inadequate . . . nor shall they be unfairly discriminatory”); \textit{Id.} § 38a-688(a)(1) (prohibiting “unfairly discriminatory rating practices” for personal risk insurance).

\textsuperscript{35} 1967 Conn. Pub. Acts, No. 852, § 1 states in relevant part:

[\textit{W}henever such insurance policy . . . provides for reimbursement for any services which may be legally performed by any person licensed under the provisions of chapter 372, reimbursement under such insurance policy . . . shall not be denied because of race, color or creed nor shall any insurer make or permit any unfair discrimination against particular individuals or persons licensed under said chapter.

\textit{Id.} \textit{See} 12 H.R. Proc., Pt. 8, 1967 Sess. p. 3328. Pursuant to Chapter 372 of the General Statutes of Connecticut, the State Board of Chiropractic Examiners must license a chiropractor. CONN. GEN. STAT. § 20-27 (West 2012). During the Joint Standing Committee hearing in 1967, Representative Paul LaRosa explained that although chiropractors provided services to patients that were members of a particular carrier’s insurance policy, before 1967 some health insurance
However, in 1969 the legislature amended subsection 10 by extending the protection against unfair discrimination to all “practitioners of the healing arts.” Consequently, practitioners of medicine, chiropractic, naturopathy, and osteopathy were protected under subsection 10. It was not until July 1, 1981, that the protection against unfair discrimination was extended to podiatry.

In Connecticut Podiatric Medical Association v. Health Net of Connecticut, Inc., the Supreme Court of Connecticut held that the insurer’s practice of reimbursing individual podiatrists at different rates than medical doctors for the same procedures was not unfair discrimination in violation of CUIPA. Although the court examined the statutory language of subsection 10 of the provision, two questions remained unanswered: (1) to whom the protection of the statute’s fourth clause extended; and (2) whether the prohibition against unfair discrimination was limited to denials of reimbursement. The court consulted the legislative history of subsection 10 to answer carriers would not offer reimbursements for the care. Connecticut Joint Standing Committee Hearing, 1967 Sess. p. 3328 (Ct. 1967) (statement of Representative LaRosa).

36 CONN. GEN. STAT. ANN. § 38a-816 (West 2012), available at http://www.cga.ct.gov/2001/pub/Chap704.htm (stating the legislative history of § 38a-816). The legislature amended subsection 10 by substituting the phrase “person licensed under the provisions of chapter 372” with “practitioner of the healing arts licensed to practice in this state.” Id. The “practice of the healing arts” is defined as the practice of “medicine, chiropractic, naturopathy and, except as used in chapters 384a and 388, the practice of osteopathy.” CONN. GEN. STAT. ANN. § 20-1 (West 2012).

37 Senator Gunther further emphasized that subsection 10 was intended to prevent unfair discrimination based on licensure by stating that the amendment eliminated “any insurance reimbursement being denied anyone based on . . . [a particular] healing art.” Connecticut Joint Standing Committee Hearings on Insurance on the Amendment to the Connecticut Unfair Insurances Practices Act C. 704 at §38a-816(10), 1969 Sess. p. 1 (Ct. 1969) (statement of Senator Gunther).

38 See CONN. GEN. STAT. ANN. § 20-1 (West 2012). In 1981, the legislature amended the General Statutes of Connecticut § 20-1 by adding, “podiatry to professions included within the term ‘healing arts.’” Id.

39 Conn. Podiatric, 28 A.3d at 975-76 (Conn. 2011). The court concluded that subsection 10 prohibits “unfair discrimination” as it applies to the denial of reimbursement on account of licensure; however, it does not preclude setting different reimbursement rates based on licensure. Id.

40 Id. at 965 (characterizing the statutory language of section 38a-816(10) as ambiguous). In determining the scope and meaning of the term “unfair discrimination” the court distinguishes the third and fourth clauses by stating that the third clause expresses a categorical prohibition while the fourth clause sets forth a conditional prohibition. Id. at 965-66. As a result, the court interprets the fourth clause to allow discrimination that is “fair.” Id. at 965. In determining to whom the protection of the fourth clause extends, the statutory language of section subsection 10 sets forth two possible interpretations. Id. Either the legislature intended to “prohibit reimbursing one individual in a particular licensure group at a different rate than all other
Upon examination of subsection 10's legislative history, the court held that the fourth clause was intended to prevent only discriminatory denials of reimbursement and not discriminatory rate setting. The court based its conclusion that subsection 10 was intended to prevent unfair discrimination on two main findings within the legislative history: (1) the gradual extension of subsection 10 protection to various “practitioners of the healing arts;” and (2) Senator Gunther's statement during the 1969 Connecticut Joint Standing Committee Hearing that subsection 10 protected against discrimination based on the particular “healing art.” Yet, the court also concluded that section 10's prohibition of “unfair discrimination” does not preclude setting different reimbursement rates on the basis of a particular license. The court noted that the statute's underlying purpose is to insure that subscribers will have coverage for treatment by any practitioner of the healing arts licensed in Connecticut. Therefore, the court reasoned that the statute's underlying purpose would only be frustrated by the denial of reimbursement and not by disparities in reimbursement rates. Moreover, the court rejected the members of the same licensure group" or the legislature intended to “extend protection against discrimination on the basis of licensure to particular individuals or persons.” Conn. Podiatric, 28 A.3d at 965. Because the statute is susceptible to more than one reasonable meaning, the court also examines how the term “discrimination” is used in related statutes throughout title 38a of the General Statutes. Id.; see Hartford/Windsor Healthcare Prop., LLC v. City of Hartford, 3 A.3d 56, 61, 63. In determining whether the prohibition against “unfair discrimination” encompasses all aspects of reimbursement, or merely denials of reimbursement the court considers the fact that the third clause of subsection 10 is expressly limited to “denials” of reimbursement. Conn. Podiatric, 28 A.3d. at 966-67. However, the court did not find that this evidence was determinative as to whether the legislature intended the same limitation to apply to the fourth clause. Id. Additionally, the fact that the legislature addresses discriminatory rate setting in other statutes in the insurance chapter of the General Statutes of Connecticut, but failed to do so in subsection 10 provides further support that the term “unfair discrimination” in the fourth clause should be restricted to denials of reimbursement. Id.; see also supra note 35 and accompanying text.
Podiatrists' and Administration's contention that different reimbursement rates could affect coverage, reasoning that nothing in the record indicates the likelihood that a podiatrist would be reimbursed at a substantially lower rate than a medical doctor so as to reach such an effect.\(^47\)

The court also rejected the dissent's contention that the majority's interpretation of the statute permits discrimination on the basis of race, color, or creed in setting reimbursement rates.\(^48\) The court reasoned that subsection 10 does not sanction any discriminatory actions, but rather provides a civil remedy for discriminatory denials of reimbursement.\(^49\) Furthermore, the plaintiff's argument that other state and federal statutes require podiatrists and medical doctors to receive equal payment was irrelevant because the court decided to limit its analysis to Connecticut statutes and case law.\(^50\) Ultimately, the court affirmed the trial court's determination that Health Net's practice of reimbursing individual podiatrists at a lower rate than medical doctors for the same procedures does not constitute "unfair discrimination" in violation of CUIPA and CUTPA.\(^51\)

The Supreme Court of Connecticut properly interpreted subsection 10 according to the statute's plain language and legislative history, concluding that the fourth clause intended to prevent "unfair discrimination" based on licensure alone.\(^52\)

\(^{47}\) \textit{Id.} at 969 n.7. The court concluded that an extreme discrepancy in reimbursement rates so as to implicate coverage would be against an insurer's own best interest. \textit{Id.} Using a hypothetical example, the Podiatrists and Association argued that where a podiatrist was reimbursed one dollar and a medical doctor was reimbursed one hundred dollars for performing an identical service, the different levels of reimbursement could affect insurance coverage. \textit{Id.} However, the Supreme Court of Connecticut held that such a substantial difference in reimbursement is unlikely because it would discourage lower cost providers from participating in the insurance network. \textit{Id.}

\(^{48}\) \textit{Conn. Podiatric}, 28 A.3d at 972 (Palmer, J., dissenting). The dissent argued that under the majority's analysis it would be "acceptable practice for an insurer to discriminate on the basis of race, color or creed in establishing its reimbursement schedule." \textit{Id.} However, the majority rejected this argument stating that the text and related statutes of subsection 10 and the legislative history support that "unfair discrimination" was limited to denials of reimbursement. \textit{Id.} at 969.

\(^{49}\) \textit{Id.} at 964 n.6. The majority explains that the statute's legislative history reflects that the legislature intended to address the specific issue of "preventing discriminatory denials of reimbursement." \textit{Id.}

\(^{50}\) \textit{Id.} at 969 n.8 (stating that the court's analysis will be confined to Connecticut statutes and applicable precedent).

\(^{51}\) \textit{Conn. Podiatric}, 28 A.3d at 969 (affirming the trial court's decision).

\(^{52}\) \textit{Id.} at 968. The court noted that the "gradual and deliberate extension of the protection to different licensures and by Senator Gunther's remark" supported the contention that subsection 10 was intended to prevent "unfair discrimination" based on licensure. \textit{Id.; Connecticut Joint
The Court also properly concluded that the protection against "unfair discrimination" is limited to denials of reimbursement. This holding reflects the legislature's intent to ensure that subscribers have coverage for treatment by any practitioner of the healing arts licensed to practice in Connecticut. Furthermore, the remarks made during the legislature's deliberation of the original bill in 1967 and its 1969 amendment refer to denials of reimbursement, while no mention is made of different reimbursement rates based on licensing.

The court adequately countered the dissent's argument that the majority's interpretation leads to an unconscionable result. The dissent contends that the majority's interpretation permits an insurer to discriminate on the basis of race, color, or creed, under subsection 10 as long as that insurer does not deny reimbursement altogether. The majority explains that subsection 10 does not provide sanctions or identify any discriminatory actions. Instead, it merely acts as a civil remedy for discriminatory denials of reimbursement. In addition, although the court acknowledged that subsection 10 provides no remedy for discrimination on the basis on

Standing Committee, supra note 37 (stating Senator Gunther's remarks).

53 Conn. Podiatric, 28 A.3d at 969. The court concluded that Health Net's practice of reimbursing the individual podiatrist at lesser rate than medical doctors does not constitute "unfair discrimination" in violation of § 38a-816(10). Id.

54 Id. at 967.

55 Id. at 969. The court provides that the term "unfair discrimination" in subsection 10 applies to the denial of reimbursement rates but not to the setting of different reimbursement rates. Id.; supra notes 35-38 and accompanying text (discussing the remarks made during the legislative consideration of the 1967 bill and the 1969 amendment).

56 Conn. Podiatric, 28 A.3d at 970 (Palmer, J., dissenting); State v. Salamon, 949 A.2d 1092, 1107 (Conn. 2008) ("Although we frequently adhere to the literal language of a statute, we are not bound to do so when it leads to unconscionable, anomalous or bizarre results").

57 Conn. Podiatric, 28 A.3d at 971. Health Net "does not dispute that the difference in reimbursement rates is not based on any difference in quality of the medical care provided by podiatrists and medical doctors or on any differences in the education or training of podiatrists and medical doctors." Id. The dissent found it unfairly discriminatory because the medical care that podiatrists provide is equal to or better in quality than the care that medical doctors provide for the same service. Id. Expert testimony revealed that the "education and training of podiatrists in foot and ankle care generally exceed that of medical doctors and orthopedic surgeons who do not specialize in such care." Id. Furthermore, "podiatrists collectively would have been paid approximately $1.2 million more annually" by the Health Net "if they had been reimbursed at the same rates that [Health Net] reimburses medical doctors for the same services." Id. The $1.2 million represents "more than one third of the annual total fees paid to podiatrists by the [Health Net]." Id.

58 Conn. Podiatric, 28 A.3d Conn. at 965 n.6.

59 Id.
race, color, or creed, it appropriately refused to decide the issue because the court has consistently held that "the task of changing the law lies with the legislature, and not with the judiciary."  

The issue between medial doctors and individual podiatrists in Connecticut Podiatric Medical Association v. Health Net of Connecticut, Inc. is symbolic of the nationwide conflict between medical doctors and other health care professionals. In fact, podiatrists have a long history of being part of this conflict. Podiatrists often experience procedure reimbursement favoritism of medical doctors by excluding podiatrists, podiatric care, and ancillary services essential to podiatric care from their basic health insurance coverage. Moreover, even when podiatric care is covered, providers reimburse podiatrists at lower rates than those paid to medical doctors for comparable services. As a result, many patients in need of foot and ankle care choose to seek treatment from their medical doctor, rather than seeking out the care of a podiatry specialist.

In Connecticut Podiatric Medical Association v. Health Net of Connecticut, Inc., the Connecticut Supreme Court considered whether the legislature intended to include the practice of reimbursing podiatrists and medical doctors at different rates for the same services within the term "unfair discrimination" under subsection 10. In holding that subsection 10 refers to "unfair discrimination" as it pertains to denial of reimbursement, the court remains consistent with the statutes legislative history and underlying purposes. The court properly concluded that the legislature did not intend to prohibit insurers from reimbursing practitioners at different rates based on licensure in accordance with the related statutory provisions in the insurance chapter of the General Statutes and with the legislature's intent to specifically address the issue of

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60 Id. at 965 n.6 (quoting Dir. of Health Affairs Policy Planning v. Freedom of Info. Comm'n, 977 A.2d 148 (Conn. 2009)). The court noted that since the present case does not involve a claim of discrimination on the basis of race, color, or creed, it will not overreach and decide the issue. Id.

61 See supra notes 33, 34 and accompanying text.

62 See supra notes 33, 34 and accompanying text.


64 See Conn. Podiatric, 28 A.3d at 960; see also Ohio Podiatric Med. Ass'n v. Taylor, 972 N.E.2d 1065, 1068 (Ohio Ct. App. 2012) (holding that a statute requiring reimbursement for podiatry services did not require parity in payment).

65 See Podiatrist Ass'n, Inc. v. La Cruz Azul de Puerto Rico, Inc., 332 F.3d 6, 11 (1st Cir. 2003).

66 See supra note 4 and accompanying text.

67 See supra notes 32-43 and accompanying text.
discriminatory denials of reimbursement. 68

68 See supra notes 40-51 and accompanying text.