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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **MARTIN TAFOYA,**

3 Worker-Appellant,

4 v.

NO. 35,987

5 **NALS APARTMENT HOMES, LLC**

6 **and FEDERAL INSURANCE COMPANY,**

7 Employer/Insurer-Appellees.

8 **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

9 **Shanon Riley, Workers' Compensation Judge**

10 Narciso Garcia, Jr.

11 Albuquerque, NM

12 for Appellant

13 Evie Jilek

14 Albuquerque, NM

15 for Appellees

16 **MEMORANDUM OPINION**

17 **GARCIA, Judge.**

18 {1} Worker seeks to appeal from the WCA's order denying Worker's objection to

1 Employer/Insurer’s selection of, and the change in, health care providers (HCPs). We
2 issued a notice of proposed summary disposition, proposing to dismiss for lack of a
3 final, appealable order. Worker has responded with a memorandum in opposition to
4 our notice. We remain unpersuaded that the order is final and immediately appealable.
5 We, therefore, dismiss.

6 {2} Our notice relied on case law directly applicable to Worker’s appeal, holding
7 that “an order regarding a change of healthcare provider (HCP) is not a final,
8 appealable order when a claim for benefits is pending before the Workers’
9 Compensation Administration (WCA).” *Murphy v. Strata Prod. Co.*,
10 2006-NMCA-008, ¶ 1, 138 N.M. 809, 126 P.3d 1173 (citing *Kellewood v. BHP*
11 *Minerals Int’l.*, 1993-NMCA-148, ¶¶ 5-11, 116 N.M. 678, 866 P.2d 406). In the
12 current case, Worker filed the complaint for benefits long before the change in HCP,
13 and the complaint is pending. [RP 1-2] We also explained that the collateral order
14 doctrine does not apply such orders to permit immediate appeal because changes to
15 HCPs can be reviewed on appeal from final compensation orders and rulings
16 regarding HCPs are often intertwined with the progress and outcome of workers’
17 compensation cases. *See Murphy*, 2006-NMCA-008, ¶¶ 12-13.

18 {3} In response to our notice, Worker contends that we should decide the issues
19 raised in his appeal because they involve substantial public interest, involve a

1 substantial right, and are capable of repetition, yet evading review. [MIO 1] Worker
2 is referring to the standard we apply to determine whether to address an issue we may
3 deem to be moot. [MIO 1] *See Howell v. Heim*, 1994-NMSC-103, ¶ 7, 118 N.M. 500,
4 882 P.2d 541. Worker seems to presume that because the same issue has been raised
5 in different factual contexts, and we continue to dismiss for lack of finality, the issue
6 evades review. Worker misunderstands. As our notice stated, rulings on HCPs can be
7 changed throughout the proceedings, are intertwined with the merits and progress of
8 the case, and can be reviewed on appeal after a final compensation order has been
9 entered, which are some of the reasons why the collateral order doctrine does not
10 apply to permit an immediate appeal. *See Murphy*, 2006-NMCA-008, ¶¶ 12-13.

11 {4} Worker’s memorandum in opposition does not persuade us that the order is
12 final and appealable. If Worker wishes to pursue this matter further, we believe his
13 remedy should be sought politically from the Legislature, which can authorize an
14 immediate appeal in this context by statute.

15 {5} For the reasons stated in our notice and in this opinion, we dismiss Worker’s
16 appeal for lack of a final, appealable order.

17 {6} **IT IS SO ORDERED.**

18
19

TIMOTHY L. GARCIA, Judge

20 **WE CONCUR:**

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2 **JAMES J. WECHSLER, Judge**

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4 **M. MONICA ZAMORA, Judge**