

In The News

Christopher Pinto Speaks with *Law Week Colorado* on Federal Appeals Dismissal and Colorado’s Drug Price Cap Litigation

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Akerman Healthcare Practice Group Partner Christopher Pinto spoke with *Law Week Colorado* on what a federal appeals court dismissal signals for the ongoing fight over Colorado’s prescription drug pricing framework, in the article “Federal Appeals Dismissal Clears Path for Merits Fight Over Colorado Drug Price Cap.”

The article examines a case that has drawn national attention: Colorado’s Prescription Drug Affordability Board is the first in the country to impose an Upper Payment Limit on a prescription drug, and the dismissal of a challenge to that framework by the U.S. Court of Appeals for the Federal Circuit has cleared the way for the first substantive constitutional test of the state’s authority to cap drug prices.

Christopher explained that the dismissal, which came by joint stipulation, “reflects an agreement to dismiss rather than a ruling on the underlying legal claims,” and that it “leaves the constitutional issues live for additional litigation.” He noted that the procedural hurdle of standing has long complicated efforts to challenge affordability boards before a regulation is applied, but that with Colorado now setting and implementing an Upper Payment Limit, that landscape is shifting. “Manufacturers would

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have more success in as-applied challenges after the board issues a definitive determination,” he said.

When courts do reach the merits, Christopher noted that while challengers have raised preemption and Dormant Commerce Clause arguments, “courts have been cautious about displacing state regulations that govern price or reimbursement unless there is a direct conflict.” He added that with drug prices remaining what he called “a hot topic,” if additional states adopt similar frameworks, a broader wave of constitutional, statutory, and commercial litigation nationwide is likely to follow.

For stakeholders, Christopher advised focusing on “demonstrating clear, concrete harm tied to specific board actions.” “That’s where you’ll see cases survive,” he said, “and where courts will finally reach the merits.”

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