



## **Commissioner Kreidler's statement that he intends to preside over adjudicative hearing concerning Kaiser Foundation Health Plan, Inc.'s proposed acquisition of Group Health Cooperative**

March 2, 2016

To the citizens of the state of Washington and interested parties:

The Office of Insurance Commissioner (OIC) previously informed the public that on December 3, 2015, Group Health Cooperative (Group Health) notified the OIC that it intends to be acquired by California-based Kaiser Foundation Health Plan, Inc. (Kaiser FHP). A Group Health membership vote on the proposed acquisition is scheduled to occur between January 30, 2016, and March 9, 2016. A final announcement is expected by March 12, 2016.

If the acquisition is approved by Group Health voting members, my staff and I will be tasked with reviewing a formal application, known as a Form A, from Kaiser FHP concerning the acquisition. This review is governed by state law (RCW Chapter 48.31B), and, in particular, RCW 48.31B.015, and will require my staff and I to look closely at how Kaiser FHP's acquisition of Group Health could affect the overall stability of the health insurance market in Washington state. This includes competition and consumer choice.

The review will involve two phases. During the first phase, specialized OIC staff, including accountants, lawyers and financial examiners, will review Kaiser FHP's Form A and make a recommendation to approve or disapprove. The second phase will involve a public hearing on the evidence pursuant to RCW 48.31B.015(4)(b), including OIC staff's recommendation, and will conclude with a decision or order issued by me, approving or rejecting Kaiser FHP's proposed acquisition of Group Health, after I have applied the criteria outlined in RCW 48.31B.015(4)(a).

By law (RCW 48.04.010(1)), I am required to hold a hearing, if any provision of Title 48, the insurance code, requires it. RCW 48.31B.015(4)(b) is such a provision. Washington Administrative Code (WAC) 284-02-070, which governs administrative hearings before my agency, states in part: "Provisions applicable to adjudicative proceedings are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10.08 WAC." RCW 34.05.425(1)(a) and RCW 34.05.461(1)(a) allow me to operate as presiding officer over the hearing on Kaiser FHP's proposed acquisition of Group Health, and enter a final order, approving or disapproving that acquisition.

My *historical* relationship with Group Health is something I wish to enter into the public record prior to the onset of any such hearing. In 1972, while a graduate student at UCLA, I interviewed

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with and was ultimately hired by Group Health as an optometrist. Coincidentally in 1972, I also interviewed with Kaiser in Oregon and was offered a comparable position, which I respectfully declined.

From 1972 until 1977, I was employed full-time in my optometrist position with Group Health. From 1977 until 1984, I served in the Washington State House of Representatives, and from 1985 until 1992, I served in the Washington State Senate. During my tenure in the Legislature, or from 1977 until January 1993, I held a part-time position with Group Health as an optometrist. From January 1991 until April 1991, I was called to active duty in the Army Reserves during Operation Desert Storm. Following the legislative session in 1992, I took a sabbatical from my job with Group Health for the remainder of the year, which was permitted during that time for employees with continuous employment of at least 10 years.

During my sabbatical, I campaigned for a seat in the United States Congress (Washington's 9<sup>th</sup> District), which I ultimately won. Following my election to Congress, the medical staff – a separate entity that contracted with Group Health and was in charge of the medical professionals there – granted me a leave of absence from my position as an optometrist. When my bid for re-election in 1994 was unsuccessful, I began the process to rejoin the medical staff at Group Health, but then was offered and accepted an appointment by then-Governor Mike Lowry to serve on the Northwest Power Planning Council. During January 1995, Group Health and I parted ways on amicable terms, following my voluntary resignation from the medical staff. Since then, I have not rejoined the medical staff at Group Health as an optometrist. However, since that time, Group Health has been the health care provider for my family and myself.

For a two-year period during the 1980s, I was a founding board member of the Group Health Foundation, a nonprofit entity affiliated with Group Health that funds medical research projects and health-related activities. I no longer serve as a member of the Foundation's board. During my tenure with Group Health, I was a part of the medical staff's retirement plan, but when I left Group Health, I withdrew any interest I had in the plan.

I currently have no retirement plan administered by Group Health, the medical staff, or Kaiser FHP. My family and I have no economic or ownership interest in Group Health or Kaiser FHP. None of my family members are employed by Group Health or Kaiser FHP. The sole connection my family and I have to Group Health is the same as anyone who is a subscriber to one of its medical plans.

Washington state law (RCW 34.05.425(3)) states that any individual serving as presiding officer "is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified." In the administrative law context, three types of bias require disqualification:

1. Prejudgment concerning issues of fact about parties in a particular case;

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2. Partiality evidencing a personal bias or personal prejudice signifying an attitude for or against a party as distinguished from issues of law or policy; and
3. An interest whereby one stands to gain or lose by a decision either way.

See *Faghih v. Dep't of Health, Dental Quality Assurance Comm'n*, 148 Wn. App. 836, 842-843 (2009), rev. denied 166 Wn.2d 1025 (2009). I have no such bias that disqualifies me from presiding over the hearing mandated by RCW 48.31B.015(4)(b).

Washington Code of Judicial Conduct Canon 2.11(A) disqualifies a judge from presiding over a matter if the judge's impartiality might reasonably be questioned, including among other things:

1. The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding;
2. The judge knows that the judge or his family is a party to the proceeding, or an officer of either party, acting as a lawyer in the proceeding, has more than a de minimis interest that could be affected by the outcome, or could be a material witness in the proceeding;
3. The judge or his family has an economic interest in the subject matter of the proceeding.

RCW 4.12.040 also dictates that a judge not preside over an action if the judge is prejudiced against any party or attorney appearing in the proceeding. As previously stated, the limited interest my family and I have in Group Health as subscribers to its medical plan does not violate the legal benchmarks. Therefore, I plan to preside over the adjudicative hearing regarding Kaiser FHP's proposed acquisition of Group Health.

When presiding over the hearing, I will be fully impartial. I have no prejudice for or against either Group Health or Kaiser FHP that would prevent me from doing so.

Sincerely,



Mike Kreidler

Washington State Insurance Commissioner