

STATE OF WASHINGTON

Phone: (360) 725-7000

MIKE KREIDLER
STATE INSURANCE COMMISSIONER



OFFICE OF
INSURANCE COMMISSIONER

HEARINGS UNIT

Fax: (360) 664-2782

DECLARATION OF MAILING

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused, delivery of a true copy of this document to Ms. Philhower and Mr. Gingold
DATED this 12th day of MAR 2010 at Tumwater, Washington.

Signed:

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Josie Bayon
Legal Assistant
(360) 725-7002
JosieB@oic.wa.gov

March 12, 2010

Andrea Philhower, Staff Attorney
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Jeffrey Gingold
Lane Powell
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101

RE: PacifiCare of Washington, Inc.
Matter no. 09-0010

Dear Ms. Philhower and Mr. Gingold:

This letter is in response to the recent communications concerning the issue of whether PacifiCare has the right to have me review Judge Burdue's Initial Order Denying Summary Judgment (Initial Order) and enter the Final Order on Motion for Summary Judgment at this time rather than wait until the initial order on the merits is entered. I now understand that the Insurance Commissioner actually opposes having the Initial order reviewed now, and so have considered the legal right of PacifiCare to have it reviewed now rather than just the pros and cons of the timing as I did in an earlier letter to you.

RCW 34.05.464(4) provides for review of initial orders of administrative law judges from the Office of Administrative Hearings (OAH), and WAC 284-02-070(2)(c)(i) which provides that *The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464)*. Neither RCW 34.05.464(4) nor WAC 284-02-070(2)(c)(i) distinguish between types of initial orders, nor do they specify that the time for final review of all initial orders entered in a proceeding must be only after the



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hearing on the merits before OAH has taken place and an initial order on the merits is entered. For these reasons, it appears to me that while a party has the right to petition for final review of any initial order at any time an initial order is entered, it is a matter of discretion of the reviewing officer whether to conduct a final review of any initial order where the petition for review is filed during the course of an administrative proceeding before OAH i.e. before an initial order on the merits is entered.

I believe for reasons of efficiency and judicial economy, and particularly because the subject initial order concerns a dispositive motion, that the Initial Order Denying Motion for Summary Judgment should be reviewed now, as requested by PacifiCare, and a Final Order on Summary Judgment entered. This way, should the Final Order on Motion for Summary Judgment determine that the Motion for Summary Judgment be granted, then there will be no need for the hearing on the merits.

If either party wishes to present authority on the matter of PacifiCare's right to review of the Initial Order in this situation, please submit it within 10 business days. Otherwise, my office will contact you to discuss whether you wish to present oral argument prior to my review of the Initial Order or whether you would like me to review it considering the hearing file and the briefs which have already been filed.

Thank you for your cooperation in scheduling the teleconference for Monday, March 15, but given the above information it is not necessary to proceed in that manner. Of course, if either party would like to schedule a teleconference at any time, please contact my legal assistant, Josie Bayon, at (360) 725-7002 or Paralegal, Nicole Kelly, at the same telephone number.

Sincerely,



PATRICIA D. PETERSEN
Chief Hearing Officer