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OFFICE OF  
INSURANCE COMMISSIONER

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HEARINGS UNIT  
Fax: (360) 664-2782

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer

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

Nicole Kelly  
Paralegal  
(360) 725-7002  
[nicolek@oic.wa.gov](mailto:nicolek@oic.wa.gov)

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	No. 11-0002
	)	
GUNDERSEN DENTAL CARE	)	<b>NOTICE OF HEARING</b>
	)	
	)	
	)	

**TO:** Gundersen Dental Care  
ATTN: Rose Gundersen, Finance Manager  
115 Cleveland Ave SE  
Tumwater, WA 98501

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
Carol Sureau, Esq. Deputy Commissioner, Legal Affairs Division  
Andrea L. Philhower, Esq., Staff Attorney, Legal Affairs Division  
John F. Hamje, Deputy Commissioner, Consumer Protection Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

**BACKGROUND**

Prior to or in August 2009, George Gundersen's medical doctor suggested that George get a snoreguard to help with his sleep apnea. In August 2009, dentist Dr. Arne Gundersen, George Gundersen's brother and regular dentist, prescribed a snoreguard for his brother and charged Premera Blue Cross ("Premera") \$850 for this service. Premera denied the claim based on the fact that the provider was the patient's brother. Premera's contract includes an exclusion of coverage for *Services or supplies ... that are furnished to you by a provider who ... is related to you by blood, marriage or adoption.* Gundersen Dental Care (hereinafter referred to as "Gundersen"), the dental clinic in which Dr. Arne



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Gundersen is the sole provider, appealed Premera's denial through Premera's Level I appeal on March 31, 2010; through Premera's Level II appeal on June 3, 2010; and finally through an independent external review organization which reviewed the case on July 21, 2010. All three levels of review made the determination that Premera had properly denied the claim based on the above contract exclusion (except the Level II review panel offered to pay that part of the \$850 claim that was for outside laboratory costs even though they were actually included in the \$850 that Dr. Arne Gundersen had charged).

On August 11, 2010, Gundersen faxed a complaint to the Office of the Insurance Commissioner ("OIC"). This complaint included 3 pages of the OIC's Complaint form, a 1 page Release and 15 pages of exhaustive *legal concepts, case law and rules of construction applicable to insurance claims and disputes*. In response to the OIC's question "What do you want your insurance company to do?" Gundersen answered that it wanted Premera to *Pay the claim, and rescind ... this type of exclusion in policies [and] disclose algorithm used in identifying how the provider is related to the insured*.

In handling Gundersen's complaint filed with the OIC, on August 13, 2010, a claims deputy in the OIC's Consumer Advocacy Division sent a letter of inquiry to Premera, presenting Gundersen's situation and issues with Premera's denial. On August 26, Premera responded, citing its above contract exclusion. By letter of September 16, the OIC determined that Premera had furnished an adequate response and that its denial of Dr. Arne Gundersen's claim was supported by the applicable facts and law.

### DEMAND FOR HEARING

On December 9, 2010, Gundersen Dental Care filed a letter, which was considered a Demand for Hearing, requesting an administrative hearing "*to challenge this action of the Commissioner [the OIC's September 16 letter determining that Premera properly denied the claim] because the [OIC's September 16] decision letter failed to explain how and why the decision was reached*. Gundersen claims that Gundersen Dental Care is *deprived of the due process right because the letter provided no basis as to how the decision was arrived. ... It is imperative that the Commissioner, as a regulatory agency, properly applied the statutes in the review of the contract and the facts related to the case. ... In summary, this hearing request questions whether the OIC has properly applied the following statutes properly as related to the ... [exclusion]....in ... George Chris Gundersen's health insurance contract: ....* Briefly, Gundersen 1) cites RCW 48.30.300, the insurance discrimination statute and general discrimination law, arguing that Premera must be making some use of gender discrimination in guessing whether certain providers are related to certain patients for whom claims are submitted (same last name may assume the woman is married, etc.) and 2) requests that the OIC review Premera's procedures in guessing/determining whether a provider and patient are related. 3) Gundersen also requests that the undersigned issue a subpoena requiring Premera to turn over its standard procedures in enforcing the clause, and the specific documents and algorithm that identified Dr. Arne Gundersen, the provider, with George Gundersen, the patient, to determine if discrimination is present. 4) Gundersen also cites RCW 48.44.020(2)(a), arguing that the OIC failed to explain why the clause is reasonable and is not ambiguous.

### PREHEARING CONFERENCE

In response to Gundersen's Demand for Hearing on January 19, 2011, the undersigned held a first prehearing teleconference in this matter. Gundersen Dental Care appeared pro se, by and through Rose Gundersen, its Finance Manager. The OIC appeared pro se, by and through Andrea L. Philhower, Esq., Staff Attorney in its Legal Affairs Division.

During said prehearing conference, the undersigned reviewed procedure to be expected before, during and after the hearing and addressed all questions and concerns of the parties. Of significance, Gundersen requested a subpoena, which is discussed and decided below. Further, by agreement of the parties, a hearing was scheduled to **commence at 10:00 a.m. on Tuesday, March 1, 2011.**

Finally, the parties were informed that if they had any future questions or concerns, or requests for additional prehearing conferences, they should contact Nicole Kelly, Paralegal to the undersigned, who can be reached by telephone at (360) 725-7002, e-mail at [nicolek@oic.wa.gov](mailto:nicolek@oic.wa.gov), or at the above address.

### HEARING

The hearing will be held under the authority of Title 48 RCW and specifically RCW 48.04, Title 34 RCW and regulations applicable thereto. Pursuant thereto, the OIC has delegated to the undersigned the authority to conduct all activities preliminary to the hearing, the hearing and all activities following the hearing, and to determine and enter the final decision in this matter. Pursuant to Title 34 RCW, the undersigned shall handle these activities and make the final decision herein without input or communication with the OIC or any member of its staff or others who have knowledge of the facts herein. Gundersen Dental Care will appear pro se, by and through Rose Gundersen, its Finance Manager, unless it wishes to be represented by an attorney. Gundersen Dental Care's address is 115 Cleveland Avenue SE, Tumwater, WA 98501 and its telephone number is (360) 357-5780. The OIC will appear pro se, by and through Andrea L. Philhower, Esq., Staff Attorney. Ms. Philhower's address is Office of the Insurance Commissioner, Legal Affairs Division, P.O. Box 40255, Olympia, WA 98504-0255, and her telephone number is (360) 725-7063.

As required by RCW 34.05.434(2)(i), you are advised that a party who fails to attend or participate in the hearing or other stage of the adjudicative proceeding may be held in default in accordance with Chapter 34.05 RCW.

Pursuant to WAC 10-08-040(2) and in accordance with Chapter 2.42 RCW, if a limited English-speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by Chapter 2.42 RCW. A Request for Interpreter form is attached to this Notice, with instructions thereon.

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This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

**Request for Subpoena.** In its Demand for Hearing and during prehearing conference, Gundersen requested that the undersigned issue a subpoena to Premera. Said subpoena would require Premera to turn over its documents covering the procedure it uses to determine whether a provider and a covered patient are "related ... by blood, marriage or adoption" for purposes of determining whether any claims are excluded under its Non-Covered Services clause, at Para. 7, which is the subject of this proceeding. The undersigned advised she would consider this request and determine whether her issuance of a subpoena was appropriate or not at the time of entry of this Notice of Hearing and has determined as follows:

Presumably Gundersen means that it is asking for a subpoena duces tecum or another discovery order whereby Premera is required to turn over the requested documents. RCW 34:05.446 provides *(1) The presiding officer may issue subpoenas .... (3) ...the presiding officer may decide whether to permit ... all other procedures authorized by rules 26 through 36 of the superior court civil rules. The presiding officer may condition use of discovery on a showing of necessity and unavailability by other means. In exercising such discretion, the presiding officer shall consider: (a) Whether all parties are represented by counsel; (b) whether undue expense or delay in bringing the case to hearing will result; (c) whether the discovery will promote the orderly and prompt conduct of the proceeding; and d) whether the interests of justice will be promoted.* [Emphasis added.]

The undersigned has determined that it is not appropriate to issue a subpoena (or other discovery order) on Premera as requested by Gundersen. At this point, Gundersen has been determined to have a right to hearing based on the OIC's September 16, 2010 letter determining that Premera properly denied George Gundersen's \$850 claim. Gundersen's assertion that how Premera determined that Dr. Arne Gundersen and George Gundersen were brothers must be discriminatory is so peripheral and tenuous that not only will undue delay in bringing the case to hearing result should a subpoena or discovery order be issued by the undersigned, but also the undersigned's issuance of the requested subpoena or other discovery order will not promote the orderly and prompt conduct of the proceeding nor the interests of justice, all as contemplated by RCW 34.05.446. Gundersen may renew its request later if it appears that this issue of discrimination gains significance and/or validity.

Based upon the above activity,

**IT IS HEREBY ORDERED** that the adjudicative proceeding in this matter shall commence on **Tuesday, March 1, 2011, at 10:00 a.m.**, Pacific Standard Time, and continue on subsequent days thereafter until terminated, in the Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, Washington 98501.

**IT IS FURTHER ORDERED** that Gundersen Dental Care's request that the undersigned issue a subpoena or other discovery order to Premera Blue Cross for the purposes stated in its Demand for Hearing and during prehearing conference, is **DENIED**. However, Gundersen Dental Care may present its request again should the issues in this matter

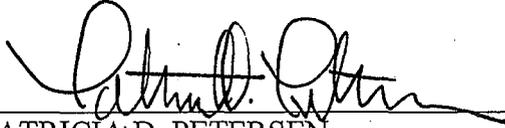
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develop in such a way as to show that the material is more relevant or central to the issues herein.

**ENTERED** AT TUMWATER, WASHINGTON, this 8<sup>th</sup> day of February, 2011, pursuant to RCW 48.04, Title 34 RCW and applicable regulations.



PATRICIA D. PETERSEN

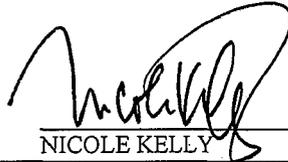
Chief Hearing Officer

Presiding Officer

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 through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Gundersen Dental Care, Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Andrea L. Philhower, Esq. and John F. Hamje.

DATED this 10<sup>th</sup> day of February, 2011.



NICOLE KELLY



OFFICE OF  
INSURANCE COMMISSIONER

HEARINGS UNIT  
Fax: (360) 664-2782

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Chief Hearing Officer  
(360) 725-7105

Nicole Kelly  
Paralegal  
(360) 725-7002  
[nicolek@oic.wa.gov](mailto:nicolek@oic.wa.gov)

To request an interpreter, complete and mail this form to:

Chief Hearing Officer  
Office of Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255

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**REQUEST FOR INTERPRETER**

I am a party or witness in Matter No. \_\_\_\_\_, before the Insurance Commissioner. I NEED AN INTERPRETER and request that one be furnished.

Please check the statements that apply to you:

I am a non-English-speaking person. I cannot readily speak or understand the English language. My primary language is \_\_\_\_\_ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

Please print or type your name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

