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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re
Seattle Children's Hospital's Appeal of
OIC's Approvals of HBE Plan Filings

NO. 13-0293
BRIDGESPAN'S JOINDER IN
PREMERA'S MOTION TO VACATE
CHIEF PRESIDING OFFICER PATRICIA
PETERSEN'S ORDERS

I. INTRODUCTION

BridgeSpan joins in Premera's Motion to Vacate Chief Presiding Officer Patricia Petersen's Orders. Even absent evidence establishing actual bias—which is present here—the appearance of fairness doctrine mandates that all substantive orders entered by Judge Petersen be vacated.

II. FACTS AND PROCEDURAL BACKGROUND

BridgeSpan adopts the facts and procedural background presented in Premera's Motion to Vacate.

III. ARGUMENT

Participants in a hearing before an administrative tribunal are entitled to a decision maker that is not only impartial, but appears to be impartial:

The appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as would be the actual presence of bias or prejudice. The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.

BRIDGESPAN'S JOINDER IN PREMERA'S MOTION TO
VACATE CHIEF PRESIDING OFFICER PATRICIA PETERSEN'S
ORDERS - 1

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1 *Chicago, Milwaukee, St. Paul & Pac. R.R. Co. v. Wash. State Human Rights Comm'n*, 87
2 Wn.2d 802, 809, 557 P.2d 307 (1976) (quoting *State v. Madry*, 8 Wn. App. 61, 70, 504 P.2d
3 (1972)). “[E]ven a mere suspicion of irregularity, or an appearance of bias or prejudice, is to
4 be avoided by the judiciary in the discharge of its duties.” *Id.* The test is whether a
5 disinterested person apprised of the relevant facts would be “reasonably justified in thinking
6 that partiality may exist.” *Swift v. Island County*, 87 Wn.2d 348, 361, 552 P.2d 175 (1976);
7 *see also Chicago, Milwaukee*, 87 Wn.2d at 810.

8 Our Supreme Court applied these principles to vacate an administrative tribunal’s
9 decision in *Chicago, Milwaukee*. When the tribunal decided a disability discrimination
10 complaint in favor of the agency and against a private railroad, one of the decision makers had
11 a job application pending with the agency appearing before it. 87 Wn.2d at 810. Recognizing
12 that there was no direct evidence of bias, the Supreme Court nevertheless concluded that the
13 situation was such that “a reasonably prudent and disinterested observer” could conclude that
14 the railroad was deprived of a “fair, impartial and neutral hearing,” and thus vacated the
15 decision. *Id.* at 811.

16 The circumstances here are likewise such that a disinterested observer would be
17 reasonably justified in thinking that partiality may exist. First, Judge Petersen has alleged a
18 series of meetings with Chief Deputy Commissioner James Odiorne beginning on September
19 6, 2013 and ending on April 15, 2014, in which she claimed to feel “extremely
20 uncomfortable” and “intimidated” as he explicitly and deliberately sought to “influence the
21 outcome of [her] decision” in this and other matters. Payton Decl., Ex. E (Snyder Dep., Ex. 3,
22 May 28, 2014) at 11; Notice of Receipt of Ex Parte Communications (May 13, 2014) at 4.
23 She also accuses Mr. Odiorne of “gross mismanagement” and concludes that there seems to
24 be “less expertise in the OIC” since Mr. Odiorne was appointed in March 2013. Payton Decl.,
25 Ex. E at 3, 9. Second, Judge Petersen’s sending of her whistleblower complaint only to the
26 attorney for SCH creates at least the appearance of partiality, and Judge Petersen’s

1 explanation that she did not realize that Mr. Madden represented SCH is questionable given
2 his repeated and lengthy appearances in this matter. See Payton, Decl., Ex. B (Letter from
3 Patricia Petersen to Mike Kreidler, May 27, 2014). A disinterested observer knowing these
4 facts, together with Judge Petersen's previous failure to disclose her husband's past
5 relationship with SCH, would be reasonably justified in thinking that Judge Petersen may
6 have been partial to SCH. Payton Decl., Ex. G (Letter from AnnaLisa Gellerman to Patricia
7 Petersen, Mar. 21, 2014); Payton Decl., Ex. H (Letter from Patricia Petersen to AnnaLisa
8 Gellerman, Mar. 26, 2014).

9 The appearance of fairness doctrine exists to ensure "public confidence in the
10 administration of justice." *Chicago, Milwaukee*, 87 Wn.2d at 809. The past and continuing
11 media coverage relating to Judge Petersen's allegations regarding the Chief Deputy's ex parte
12 contact and her own ex parte communications with SCH counsel have been widely
13 publicized.¹ A legislative hearing into Ms. Peterson's allegations and conduct is scheduled
14 for June 16 promising additional but not entirely foreseeable press revelations. This will
15 contribute to suspicions about the integrity of the process to date. The allegations will cause a
16 reasonably prudent and disinterested observer to question the fairness of the adjudicative
17 process, Judge Petersen's prior orders should be vacated so that all substantive decisions are
18 made by the hearing officer recently appointed for the purpose of ensuring fairness and the
19 appearance of fairness.

20 Any delay or burden from vacating Judge Petersen's orders should be minimal; the
21 few issues decided by Judge Petersen do not need to be briefed anew. Even assuming some

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23 ¹ See, e.g., Carol M. Ostrom, *Kreidler Removes Hearings Officer in Seattle Children's Case*, The Seattle
24 Times, May 14, 2014, available at [http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-
25 chastises-deputy-insurance-commissioner/](http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-deputy-insurance-commissioner/); Valerie Bauman, *The Whistleblowing Judge, the Office Depot Tipster
26 - and why the Health Care Industry Can't Stop Watching*, May 20, 2014, available at
[http://www.bizjournals.com/seattle/blog/health-care-inc/2014/05/the-whistleblowing-judge-the-office-depot-
tipster.html](http://www.bizjournals.com/seattle/blog/health-care-inc/2014/05/the-whistleblowing-judge-the-office-depot-tipster.html); *Auditor Won't Investigate Whistleblower Complaint*, Associate Press, May 21, 2014, available at
<http://www.kirotv.com/ap/ap/washington/auditor-wont-investigate-whistleblower-complaint/nf5K6/>.

1 administrative burden or delay would result, the potential for prejudice (none has yet been
2 identified) is far outweighed by the importance of maintaining public confidence in the
3 outcome of a case that will affect the health insurance coverage of thousands of Washington
4 citizens.

5 **IV. CONCLUSION**

6 The appearance of fairness requires vacation of Judge Petersen's orders. The contents
7 of the whistleblower report and her ex parte contact with Mr. Madden present enough
8 evidence of potential bias that a disinterested person would be reasonably justified in thinking
9 that partiality may exist. The appearance of fairness will be preserved only if *all* substantive
10 decisions in this matter are made by a judge not tainted by the appearance of partiality.

11 DATED this 12th day of June, 2014.

12 CARNEY BADLEY SPELLMAN, P.S.

13
14 By 

15 Timothy J. Parker, WSBA #8797

16 Jason W. Anderson, WSBA #30512

17 Melissa J. Cunningham, WSBA #46537

18 Attorneys for BridgeSpan Health Company

CERTIFICATE OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On June 12, 2014, I caused to be delivered via e-mail and U.S. mail a copy of the foregoing document on the following parties at the last known address as stated:

Table with 2 columns and 3 rows of recipient information, including contact details for OIC Hearings Unit, Attorney for Seattle Children's Hospital, Attorney for OIC, Attorney for Premera Blue Cross, and Deputy Insurance Commissioner for Legal Affairs.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 12th day of June, 2014, at Seattle, Washington.

Handwritten signature of Christine Williams

Christine Williams, Legal Assistant