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KAZ

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 HEALTH COMPANY'S
MEMORANDUM IN OPPOSITION TO
MOTION TO STRIKE

I. INTRODUCTION

The Office of the Insurance Commissioner ("OIC") and the Health Plans filed motions to dismiss and for summary judgment premised in part on RCW 48.04.010(1) which requires that a party requesting a hearing be "aggrieved." Hearings before the New Hampshire Insurance Department have the same threshold statutory requirement. In a similar proceeding, the New Hampshire Insurance Department's hearing officer recently dismissed a hospital's complaint asserting its exclusion from a health plan's exchange network rendered the network inadequate.

The most recent New Hampshire ruling affirming this dismissal after reconsideration was issued on March 28, 2014—after the February 20, 2014 order denying the OIC's and Health Plans' motions.¹ The hearing officer's ruling is legal authority that is appropriately

¹ The New Hampshire hearing officer first dismissed both the hospital and patient petitioners from the action on December 11, 2013. Both petitioners filed a request for reconsideration, asserting for the first time that the health plan could not meet network adequacy standards unless they included the hospital petitioner in their provider network. *See* Cunningham Dec., Ex. B at 2. On January 17, 2014, the hearing officer granted the request and **suspended the December 11, 2013 order.** *Id.* On March 28, 2014 the hearing officer reversed the dismissal of the patient petitioner, but affirmed the dismissal of the hospital petitioner for lack of standing. *Id.* at 3. In doing so, the hearing officer specifically incorporated his findings from the December 11, 2013 by reference. *Id.*

ORIGINAL

1 included in any brief. The legal authority cited by Seattle Children’s Hospital in its motion to
2 strike does not hold otherwise.

3 There is no prohibition against citing additional legal authority in a reply brief—
4 especially recent authority not published at the time the original motions were determined.
5 See note 1, *supra*. In this case, BridgeSpan cites the New Hampshire Insurance Department’s
6 decision dismissing a hospital’s complaint that it was not included in a health plan’s exchange
7 network.

8 That is the same issue and the same relief sought by the Insurance Commissioner and
9 the Health Plans respectively in their Motion to Dismiss and Motion for Summary Judgment.
10 The presiding office should vacate, or “reconsider,” the substantive rulings made by the prior
11 presiding officer.

12 II. ARGUMENT AND AUTHORITY

13 The legal authorities cited by Seattle Children’s Hospital do not support its motion to
14 strike. The published part of *Tucker v. Hayford*, 118 Wn. App. 246, 75 P.3d 980 (2003) does
15 not address the issue. *White v. Kent Med. Ctr.*, 61 Wn. App. 163, 810 P.2d 4 (1991) reversed
16 summary judgment in favor of a medical malpractice defendant on proximate cause where the
17 *issue* of proximate cause was not addressed or raised in the motion but only in the moving
18 party’s reply brief. *Truck Ins. Exch. v. Century Indem. Co.*, 76 Wn. App. 527, 536 n. 4, 887
19 P.2d 455 (1995) merely cites *White* for the general proposition that new *issues* cannot be
20 raised in a reply brief.

21 BridgeSpan does not raise any new issue in its reply brief supporting the Motion to
22 Vacate. The Motion to Vacate seeks (1) a determination that concerns for fairness and
23 appearance of fairness mandate decisions by the newly appointed presiding officer on the
24 Motion to Dismiss and Motion for Summary Judgment, and (2) vacation, reversal or
25 reconsideration of these substantive orders. The New Hampshire administrative decision
26 buttresses the merits of these motions. The substantive issues on the Motion for Summary

1 Judgment and the Motion to Dismiss are no different now than when they were originally
2 filed.

3 **III. CONCLUSION**

4 BridgeSpan respectfully requests that the Motion to Strike be denied and the Motion to
5 Vacate be granted. It further requests that the OIC Motion to Dismiss and the Health Plans
6 Motion for Summary Judgment be granted.

7 DATED this 25 day of June, 2014.

8 CARNEY BADLEY SPELLMAN, P.S.

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10 By 

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14 Attorneys for BridgeSpan Health Company

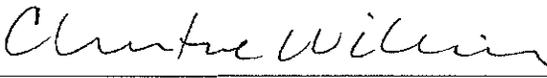
CERTIFICATE OF SERVICE

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 25, 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:

<p>OIC Hearings Unit – ORIGINAL Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 Email: kellyc@oic.wa.gov</p> <p>Hon. George Finkle (Ret.) Email: gfinkle@jdrllc.com forbes@jdrllc.com</p>	<p><u>Attorney for Seattle Children’s Hospital</u> Michael Madden Carol Sue Janes Bennett Bigelow & Leedom, P.S. 601 Union Street, Suite 1500 Seattle, WA 98101 Email: mmadden@bblaw.com csjanes@bblaw.com</p>
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I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 25th day of June, 2014, at Seattle, Washington.



Christine Williams, Legal Assistant