

FILED

Jun 26
2014 JUL -7 A 10:00
KAC

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In re

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

DOCKET NO. 13-0293

**OPPOSITION TO SEATTLE
CHILDREN'S MOTION FOR
PROTECTIVE ORDER**

I. INTRODUCTION

Seattle Children's Hospital ("SCH") seeks to curtail all substantive discovery in this matter, despite its complicated nature and its significant impact on the citizens of Washington enrolled in health care through the Exchange. Yet, SCH fails to meet its burden to show that it is necessary to restrict discovery in such a manner. These proposed limits serve no purpose other than to deprive the OIC and Intervenors from completing the discovery necessary to adequately defend their case. Further, these limits are contrary to the discovery rules applicable in this hearing.

II. FACTS

SCH misrepresents the applicable facts. It is not the case that SCH has "made repeated efforts" and has been rebuffed by the OIC and the Intervenors. The Intervenors have made all of their witnesses available for deposition. On the other hand, SCH has only

**OPPOSITION TO SEATTLE CHILDREN'S MOTION FOR
PROTECTIVE ORDER - 1
DOCKET NO. 13-0293**

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WA 98111-9402
206.223.7000 FAX: 206.223.7107

1 provided dates for four of its witnesses despite repeated requests from the Intervenor for
2 such dates. SCH has still not articulated a sound basis for depriving the parties of such
3 discovery.

4 III. ANALYSIS

5 SCH has not met its burden to show that good cause exists to limit discovery, and
6 therefore the Court should deny its motion for a protective order. As an initial matter, the
7 Hearings Unit abides by the discovery rules set forth in the Washington superior court rules.
8 *See* WAC 284-02-270(2)(e) (“Discovery is available in adjudicative proceedings pursuant to
9 Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission
10 of the presiding officer or the administrative law judge in accordance with RCW
11 34.05.446(2) . . . Civil Rules 26 through 37 are adopted and incorporated by reference in this
12 section, with the exception of CR 26(j) and (3) and CR 35, which are not adopted for the
13 purposes of this section.”).

14 SCH’s proposed relief deprives OIC and the Intervenor from discovery to which
15 they would be otherwise entitled. Assuming that King County Local Rules apply here, as
16 SCH first brought this action in King County Superior Court, OIC and the Intervenor would
17 be entitled to up to ten depositions, each deposition for up to seven hours and one deposition
18 for up to two days and seven hours per day. LCR(b)(3) In addition, OIC and the Intervenor
19 would be entitled to up to 40 interrogatories. LCR(b)(2)(B). However, SCH instead seeks to
20 limit discovery to depositions only of witnesses on its disclosure list, depositions with a three
21 hour limit, and no written discovery.

22 SCH’s proposed relief¹ is effectively a protective order in line with that provided for
23 by CR 26(c).² But, SCH falls well short of meeting the standards necessary for a court to

24 ¹ SCH does not explicitly request a protective order under CR 26(c), although the rule applies to this hearing.
25 WAC 284-02-270(2)(e). Instead, SCH more generally argues that the Hearings Unit has the right to limit
26 discovery and cites to both CR 26(c) and CR 26(b)(1). CR 26(b)(1) clearly does not apply here. That rule
provides that courts may limit discovery where the discovery sought is “obtainable from some other source that
is more convenient, less burdensome, or less expensive” or where “the discovery is unduly burdensome and

1 implement such an order. In order to limit discovery under Washington's liberal discovery
2 rules, SCH bears a heavy burden to show why that discovery should be limited. *See Cedell v.*
3 *Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 696 (2013) ("The burden of persuasion is
4 upon the party seeking the protective order."); *see also Blankenship v. Hearst Corp.*, 519
5 F.2d 418, 429 (9th Cir. 1975) (explaining that under the corresponding federal rule, Fed. R.
6 Civ. P. 26(c), the party seeking to limit discovery bears a "heavy burden"). In exercising
7 such authority to limit discovery, "the court has broad discretion to manage the discovery
8 process so as to implement full disclosure of relevant information while protecting against
9 harmful side effects." *Kramer v. J.I. Case Mfg. Co.*, 62 Wn. App. 544, 556 (1991). SCH has
10 not met its burden as it cannot show that the discovery sought by the OIC and the Intervenor
11 is not relevant and it cannot show that allowing the OIC and the Intervenor to discovery
12 would result in harmful side effects.

13 On the first consideration, relevancy, SCH has not shown that the OIC and the
14 Intervenor are seeking irrelevant discovery. SCH does not contend that the discovery
15 sought by the OIC and the Intervenor is not relevant. Moreover, even if SCH were to argue
16 as much, it would be very difficult to show that any discovery sought by the OIC and the
17 Intervenor was irrelevant because, in Washington law, relevancy is defined broadly. *Gillett*
18 *v. Conner*, 132 Wn. App. 818, 822 (2006) ("CR 26(b)(1) provides a broad definition of
19 relevancy . . . Discovery is allowed for any matter that appears reasonably calculated to lead
20 to the discovery of admissible evidence."). Finally, although the OIC and the Intervenor

21 expensive, taking into account the needs of the case . . . and the importance of the issues at stake in the
22 litigation." The discovery sought by OIC and the Intervenor is not obtainable from sources other than SCH
23 witnesses and allowing OIC and the Intervenor more than three hours per deposition is not unduly burdensome
24 or expensive for a case of this magnitude. Moreover, the cases cited here by SCH are inapposite. The OIC and
the Intervenor do not deny that the Hearings Unit has the ability to step in to manage the discovery process
when necessary. SCH has simply not shown that such intervention is appropriate here.

25 ² CR 26(c) provides that, "[u]pon motion by a party or by the person from whom discovery is sought, and for
26 good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition,
the court in the county where the deposition is to be taken may make any order which justice requires to protect
a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that
the discovery may be had only on specified terms and conditions."

**OPPOSITION TO SEATTLE CHILDREN'S MOTION FOR
PROTECTIVE ORDER - 3**

13-0293

100407.0434/6051357.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WA 98111-9402
206.223.7000 FAX: 206.223.7107

1 object to unduly limiting discovery in such a way, they do not intend at this time to depose
2 witnesses other than those already identified by SCH on its witness disclosures. Clearly,
3 SCH's own witnesses' testimony is not irrelevant.

4 Moreover, SCH has similarly failed to show how permitting depositions more than
5 three hours long would be a "harmful side effect." Under CR 26(c), a party shows "good
6 cause" for entering a protective order by "showing that any of the harms listed in the rule are
7 threatened and can be avoided without impeding the discovery process." *Flower v. T.R.A.*
8 *Indus., Inc.*, 127 Wn. App. 13, 38 (2005). However, SCH has not shown how depositions
9 longer than three hours or written discovery would annoy, embarrass, oppress or cause SCH
10 undue burden or expense. SCH's only argument in favor of ordering a protective order is
11 that it seeks "reasonable limits" and a "reasonable schedule." Interests of reasonableness are
12 not sufficient to warrant these limits. And, even if reasonableness were part of the inquiry,
13 SCH does not even explain how these limits are reasonable. This matter is complicated and
14 its outcome will significantly impact Exchange enrollees, insurers, and providers. Three
15 hours is simply not enough time to adequately depose SCH's witnesses. To the extent that
16 SCH's argument hinges on the burden of conducting discovery in an expedited manner, it
17 was SCH that has sought to accelerate these proceedings.

18 Finally, this case does not present the circumstances typically present when courts
19 have instituted a protective order such as that sought by SCH. For instance, in *Shields v.*
20 *Morgan Fin., Inc.*, the Court of Appeals affirmed a trial court's grant of a defendant's
21 proposed protective order where the plaintiff sought to depose high level executives of a
22 mortgage company when those executives had no knowledge of specific facts at issue in the
23 case. 130 Wn. App. 750, 759 (2005); *see also Sakkarapope v. State, Bd. of Regents,*
24 *Washington State Univ.*, 129 Wn. App. 1017 (2005) (unpublished decision affirming
25 defendant's proposed protective order where plaintiff "abused the discovery process by
26 propounding lengthy requests for unnecessary, irrelevant and privileged information").

**OPPOSITION TO SEATTLE CHILDREN'S MOTION FOR
PROTECTIVE ORDER - 4**

13-0293

100407.0434/6051357.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4200
P.O. BOX 91302
SEATTLE, WA 98111-9402
206.223.7000 FAX: 206.223.7107

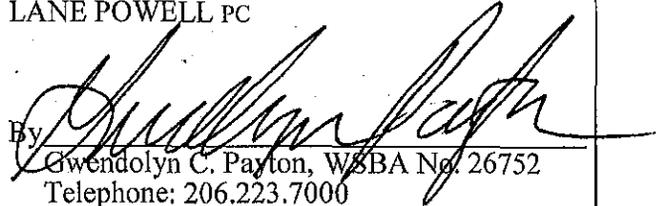
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. CONCLUSION

SCH's request for a protective order should be denied.

DATED: June 26, 2014

LANE POWELL PC



By Gwendolyn C. Payton, WSBA No. 26752
Telephone: 206.223.7000
Facsimile: 206.223.7107
Attorney for Premera Blue Cross

CARNEY BADLEY SPELLMAN, P.S.

By Timothy Parker ^{90 - by email}
autographed

Timothy J. Parker, WSBA No. 8797
Jason W. Anderson, WSBA No. 30512
Melissa J. Cunningham, WSBA No. 46537
Attorneys for BridgeSpan Health Company

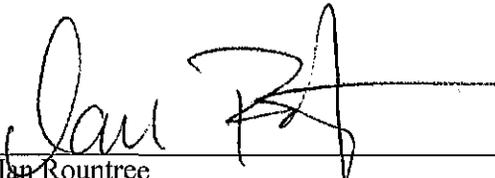
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I, Ian Rountree, hereby certify under penalty of perjury of the laws of the State of Washington that on June 26, 2014, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

<p><u>OIC HEARINGS UNIT</u> Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 Email: kellyc@oic.wa.gov</p>	<p><u>Seattle Children's Hospital</u> Michael Madden Bennett Bigelow & Leedom, P.S. 601 Union Street, Suite 1500 Seattle, WA 98101 Email: mmadden@bblaw.com</p>
<p><u>Deputy Insurance Commissioner for Legal Affairs</u> AnnaLisa Gellerman Office of the Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 Email: annalisag@oic.wa.gov</p>	<p><u>BridgeSpan Health Company</u> Timothy J. Parker Carney Badley Spellman 701 Fifth Avenue, Suite 3600 Seattle, WA 98104-7010 Email: parker@carneylaw.com</p>
	<p><u>Legal Affairs Division</u> <u>Office of the Insurance Commissioner</u> Charles Brown P.O. Box 40255 Olympia, WA 98504-0255 Email: charlesb@oic.wa.gov</p>

- by CM/ECF
- by Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery


 Ian Rountree