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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

DOCKET NO. 13-0293

**MOTION TO VACATE CHIEF
PRESIDING OFFICER PETERSEN'S
ORDERS**

I. INTRODUCTION

This case presents an extraordinary set of circumstances. Chief Presiding Officer Patricia Petersen sent private ex parte communications about the case to counsel for one of the parties. There is no longer any legitimate dispute about her impartiality – after initial silence, she now admits to the ex parte contact.

Under the relevant standards set forth in CR 60(b)(11), Judge Petersen's orders in this proceeding must be vacated. According to her own words, Judge Petersen has been tainted since September 2013. This is sufficient grounds alone to vacate her rulings after that date. But the case became even more remarkable when Judge Petersen then had ex parte contact with counsel for one of the parties, Seattle Children's Hospital ("SCH"). In that ex parte communication, Judge Petersen complained that the Office of the Insurance Commissioner ("OIC"), another party to this action, made numerous attempts to influence her before she issued any ruling in this case and continued to try to influence her at key stages in the

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 1
DOCKET NO. 13-0293**

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1 litigation, including immediately following the filing of dispositive motions. Regardless of
2 the merits of her accusation, her own words leave no question that Judge Petersen's decision-
3 making and her ability to remain impartial were compromised prior to issuing rulings in this
4 case. Her prior orders and rulings are tainted as a matter of law, and cannot stand.

5 6 II. FACTUAL AND PROCEDURAL BACKGROUND

7 On July 31, 2013, the OIC approved plans from Premera Blue Cross ("Premera") and
8 Bridgespan Health Company ("Bridgespan") for inclusion on the Washington Health Care
9 Exchange ("Exchange"). Demand for Hearing (Oct. 22, 2013).¹ Neither of these plans
10 included Seattle Children's Hospital ("SCH") as a provider within their Exchange networks.²
11 *Id.* Alleging that it was aggrieved by the OIC's approval of Exchange networks where it was
12 not included as an in-network provider, SCH filed a Demand for Hearing with the OIC on
13 October 22, 2013. *Id.*

14 SCH's Demand was signed by SCH's attorney of record for this action, Michael
15 Madden. *Id.* On November 8, 2013, Judge Petersen issued a "Notice of Receipt of Demand
16 for Hearing" to Mr. Madden. Notice of Receipt of Demand for Hearing (Nov. 8, 2013). That
17 notice acknowledged receipt of SCH's Demand and scheduled a prehearing conference. *Id.*
18 At no time during the initial pleading stages did Judge Petersen disclose that her husband (a
19 physician) is affiliated with SCH. *See* Payton Decl., Ex. F (Online profile of Dr. Dana
20 Petersen); *see also* Payton Decl., Ex. G (Letter from AnnaLisa Gellerman to Patricia
21 Petersen, Mar. 21, 2014), Payton Decl., Ex. H (Letter from Patricia Petersen to AnnaLisa
22 Gellerman, Mar. 26, 2014).

23 ¹ Pleadings in this action are available at [http://www.insurance.wa.gov/laws-rules/administrative-](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/)
24 [hearings/judicial-proceedings/s-t/](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/). Those that are not available on that site are attached here to the Declaration
of Gwendolyn Payton ("Payton Decl.").

25 ² The OIC also approved plans from Coordinated Care Corporation and Molina Healthcare of Washington, Inc.
26 in September 2013. Neither of those plans included SCH as a provider. Originally, SCH contested those
approvals as well. However, as both Coordinated Care and Molina have now reached agreements with SCH to
include SCH in their networks, neither are currently involved in this action. As such, this brief will focus solely
on Premera and Bridgespan.

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 2**

13-0293

100407.0434/6039736.1

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1 On November 18, 2013, Judge Petersen convened a prehearing conference. Order
2 Confirming Motions Schedule (Jan. 14, 2014). At that conference, Mr. Madden appeared for
3 SCH. See Payton Decl. at ¶ 2. Premera and Bridgespan also participated. *Id.* At that
4 hearing, all the parties confirmed they would file dispositive motions in the case. Order
5 Confirming Motions Schedule (Jan. 14, 2014).

6 Pursuant to the schedule set by the Order Confirming Motions Schedule, the parties
7 and Intervenor filed dispositive motions. On January 15, 2014, the OIC moved to dismiss
8 SCH's Demand for Hearing. OIC Staff's Motion to Dismiss Demand for Hearing and To
9 Terminate Adjudicative Proceeding (Jan. 15, 2014). On January 17, 2014, SCH moved for
10 partial summary judgment. Seattle Children's Hospital Motion for Summary Judgment (Jan.
11 17, 2014). On January 17, 2014 the Intervenor—Premera, Bridgespan, and (at the time)
12 Coordinated Care—moved for summary judgment, seeking dismissal of SCH's Demand.
13 Intervenor's Joint Motion for Summary Judgment (Jan. 17, 2014). On February 3, 2014,
14 Judge Petersen heard oral argument on the dispositive motions. Oral Argument, (Feb. 3,
15 2014), *available at* [http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-
16 proceedings/documents/SCHFeb3Motions.MP3](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/documents/SCHFeb3Motions.MP3). Mr. Madden appeared and argued for SCH
17 at that hearing. *Id.* at 2:41.

18 On February 20, 2014, Judge Petersen denied the OIC's motion to dismiss in its
19 entirety. Order on OIC's Motion Dismiss (Feb. 20, 2014). Specifically, Judge Petersen held
20 that OIC failed to establish that there are no genuine issues of material fact with respect to (1)
21 OIC's argument that SCH's Demand for Hearing sought relief for issues that were non-
22 justiciable under the OIC Hearings Unit; and (2) whether OIC complied with the federal and
23 state requirements in the OIC's review of the Intervenor's plans. *Id.*

24 Also on February 20, 2014, Judge Petersen denied in full the Intervenor's motion for
25 summary judgment. Order on Intervenor's Joint Motion for Summary Judgment (Feb. 20,
26 2014). Specifically, Judge Petersen held that the Intervenor had "not shown that there are

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 3**

13-0293

100407.0434/6039736.1

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1 no genuine issues as to any material facts and have not shown that they are entitled to
2 judgment as a matter of law.” *Id.* at 6.

3 Then, on March 14, 2014, Judge Petersen granted SCH’s motion in part. She held
4 that as a matter of law, the OIC was required to ensure that each plan on the Exchange
5 complied with the Affordable Care Act. Order on Seattle Children’s Hospital Motion for
6 Partial Summary Judgment at 19 (Mar. 14, 2014). Judge Petersen otherwise denied SCH’s
7 motion. *Id.* However, throughout the Order, even where Judge Petersen denied summary
8 judgment, she provided “discussion . . . as an aid in clarification of the issues at hearing.” *Id.*
9 at 8; *see also id.* at 10-11 (“[T]he following discussion is offered as an aid in clarifying the
10 issues at hearing”), *id.* at 12 (“The discussion below is intended to be an aid in clarifying
11 these issues at hearing.”).

12 On March 21, OIC Deputy for Legal Affairs AnnaLisa Gellermann wrote a letter to
13 Judge Petersen, cc’ed to all parties, disclosing her discovery of the potential economic
14 interest between Judge Petersen’s husband, Dr. Dana Petersen (a pediatrician), and SCH.
15 Payton Decl., Ex. G (Letter from AnnaLisa Gellerman to Patricia Petersen, Mar. 21, 2014).
16 Ms. Gellermann’s letter concluded that these interests did not create a conflict. *Id.* Judge
17 Petersen sent a letter in response stating that before the commencement of the hearing, she
18 had thought about Dr. Petersen’s connection with SCH and concluded that they did not bias
19 her, and as a result it was not necessary to disclose the facts to the parties. Payton Decl., Ex.
20 H (Letter from Patricia Petersen to AnnaLisa Gellerman, Mar. 26, 2014).

21 Following Judge Petersen’s orders on the dispositive motions, SCH moved the
22 Hearings Unit to set a hearing date. Seattle Children’s Hospital Motion to Set Hearing Date
23 and Pre-Hearing Schedule, and for Protective Order (Apr. 1, 2014). SCH requested that the
24 hearing be scheduled for June 9 through June 11, and urged the Hearings Unit “not to select a
25 hearing date beyond June 2014.” *Id.* at 2-3. SCH also sought a protective order to drastically
26 limit the amount of discovery that the Intervenors could conduct in advance of the hearing.

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 4**

13-0293

100407.0434/6039736.1

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1 Specifically, SCH moved that the Intervenors “be granted no separate authority to note or
2 conduct depositions.” *Id.* at 3.

3 Judge Petersen convened a pre-hearing conference on April 14, 2014, and Mr.
4 Madden again appeared and spoke on behalf of SCH. Payton Decl. at ¶ 3. During the pre-
5 hearing conference, which lasted approximately two and half hours, Judge Petersen ordered
6 SCH, the OIC and the Intervenors to file a list of issues to be decided at the hearing. Order
7 on Prehearing Conference (Apr. 15, 2014). SCH, the OIC, and the Intervenors submitted
8 their respective proposed statement of issues and witness lists. Seattle Children’s Hospital’s
9 Proposed Statement of Issues for Hearing (Apr. 16, 2014); OIC Staff Statement of Proposed
10 Issues and List of Possible Witnesses (Apr. 18, 2014); Health Carriers’ Issues (Apr. 18,
11 2014).

12 Judge Petersen convened another pre-hearing conference on April 21, 2014 to discuss
13 the statements of issues. Mr. Madden again appeared and spoke on behalf of SCH. *See*
14 Payton Decl. at ¶ 4. On May 5, Judge Petersen issued a letter to “clarif[y] the issues to be
15 addressed at the hearing.” *See* Payton Decl., Ex. A (Letter from Patricia Petersen to Michael
16 Madden et al., May 5, 2014). In this letter, Judge Petersen explained that she “believe[s]
17 [this letter] properly incorporates all parties’ submissions and concerns.” *Id.*

18 On May 8, 2014, Judge Petersen set the hearing for June 9, 2014 despite the concerns
19 raised by the OIC, Premera, and Bridgespan. Notice of Hearing (May 8, 2014).

20 On May 13, 2014, Judge Petersen *sua sponte* issued a statement to the parties that she
21 had been the target of ex parte contact. Notice of Receipt of Ex Parte Communications by
22 Presiding Officer from Agency Employee (May 13, 2014). Specifically, Judge Petersen
23 alleged that Chief Deputy Insurance Commissioner James T. Odiorne “made these efforts [to
24 meet privately with Judge Petersen] . . . in order to influence the outcome of [her] decision in
25 the area of the federal Affordable Care Act, the Commissioner’s approvals/disapprovals of
26 the Washington Health Care Exchange filings made by carriers for certification by the

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 5**

13-0293

100407.0434/6039736.1

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1 Exchange and ultimate sale to Washington consumers.” *Id.* at 4.

2 According to Judge Petersen, this contact with regards to the instant action began as
3 early as September 2013 when Mr. Odiorne attempted to “impose his opinions and influence
4 [Judge Petersen’s] decisions in the Coordinated Care case.” *Id.* That case, in Judge
5 Petersen’s own words, “included the same significant issue (network adequacy)” as this case.
6 *Id.* at 4. Judge Petersen detailed “several private one-on-one meetings from September 2013
7 to the current time.” *Id.* at 5. According to Judge Petersen, Mr. Odiorne “expressed
8 displeasure” about her decisions. *Id.* Judge Petersen then described Mr. Odiorne’s actions as
9 “illegal and unethical.” *Id.* at 6.

10 While recognizing that the remedy for the actions alleged in this letter “may be
11 disqualification of the presiding officer,” Judge Petersen instead declined to recuse herself.
12 *Id.* at 6. She explained that Mr. Odiorne’s attempts were not “successful.” *Id.* Finally,
13 Judge Petersen stated that “in recognition of economy in the administrative process and the
14 many hours of work which have gone into this case to date on the part of the undersigned
15 presiding officer as well as the parties, it is the undersigned’s suggestion that she remain as
16 presiding officer.” *Id.*

17 That same day, Mr. Madden received an email from a then unknown source, which,
18 as detailed below, was later revealed to be Judge Petersen. Payton Decl., Ex. E (Snyder
19 Dep., Ex. 3, May 28, 2014). The email was sent from an Office Depot in Olympia,
20 Washington, but the sender was not identified by name. *Id.* That email contained a
21 whistleblower action filed by Judge Petersen with the State Auditor’s Office. *Id.*

22 Mr. Madden was the only recipient to that email, it was not sent to counsel for OIC,
23 counsel for Premera, or counsel for Bridgespan. *Id.* In that whistleblower action, Judge
24 Petersen filed the complaint against Mr. Odiorne for “gross mismanagement.” *Id.* at 3. She
25 stated that the “improper governmental action” started on September 6, 2013. The
26 whistleblower complaint contained an addendum, in which Judge Petersen further detailed

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 6**

13-0293

100407.0434/6039736.1

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1 her grievances. In that addendum, Judge Petersen describes in great detail how she continued
2 to receive ex parte communications and influence during each stage of this action. She
3 described the actions of this OIC employee as “serious improper governmental action.” *Id.* at
4 6. She further explained that she believed that these actions “stand to have a harmful,
5 unlawful, impact upon Washington consumers and also potentially nationwide.” *Id.*

6 Judge Petersen wrote that these actions “deprive[] the public of their right to due
7 process, fair hearings and final decisions made by an impartial presiding officer.” *Id.*
8 (emphasis added). In addition, Judge Petersen wrote that she was threatened that her actions
9 with these Exchange cases may deprive her of a “positive work performance evaluation.” *Id.*
10 at 10. She further wrote that “Mr. Odiorne failed to maintain his voice and tenor of his
11 communications [] at a conversational level and [she] was quite intimidated by his behavior.”
12 *Id.* at 11 (emphasis added). According to Judge Petersen, her “job itself was at stake
13 depending upon the decisions [she] made in these cases and particularly the SCH case.” She
14 also contends that Mr. Odiorne insinuated she was “incapable.” *Id.*

15 Judge Petersen’s addendum to the whistleblower complaint contains several examples
16 of specific incidents in which she claimed that she was improperly contacted with regards to
17 this instant action. This addendum detailed private one-on-one meetings that Judge Petersen
18 believed to be inappropriate immediately following the parties’ and intervenors’ filing of
19 their dispositive motions and following the oral argument Judge Petersen held on those
20 dispositive motions. *Id.* at 11.

21 One day later, May 14, 2014, Judge Petersen convened a pre-hearing conference.
22 Pre-Hearing Conference (May 14, 2014), *available at* [http://www.insurance.wa.gov/laws-](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/May14PHC5.MP3)
23 [rules/administrative-hearings/judicial-proceedings/s-t/May14PHC5.MP3](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/May14PHC5.MP3). The paralegal for
24 the Hearings Unit introduced the counsel participating in the hearing for Judge Petersen,
25 colloquially referring to counsel appearing at the hearing, including Mr. Madden, as the
26 “usual players.” *Id.* at 0:05. At that hearing, Mr. Madden raised with the Hearings Unit that

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 7**

13-0293

100407.0434/6039736.1

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206.223.7000 FAX: 206.223.7107

1 he had received Judge Petersen's whistleblower complaint. *Id.* at 7:12-7:48. Even though
2 Judge Petersen later admitted to sending the document, she asked Mr. Madden how that
3 document was "acquired." *Id.* at 8:20 – 8:38. Mr. Madden outright asked Judge Petersen to
4 confirm that she had not participated in the sending of that email, which would constitute ex
5 parte contact. *Id.* at 21:34-22:11. Judge Petersen did not deny it, merely stating that she did
6 not know if the document was public and asked Mr. Madden not to distribute the email. *Id.* at
7 22:11-23:00. Mr. Madden responded that he sent it to counsel in this case, because he felt
8 obligated to report the ex parte communication. *Id.* at 23:00-24:50. She asked that someone
9 send a copy to her through her paralegal. *Id.* at 24:46.

10 On that same day, OIC Commissioner Mike Kreidler removed Judge Petersen from
11 her docket and placed her on paid leave. *See* Carol M. Ostrom, *Kreidler Removes Hearings*
12 *Officer in Seattle Children's Case*, Seattle Times, May 14, 2014, available at
13 [http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-](http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-deputy-insurance-commissioner/)
14 [deputy-insurance-commissioner/](http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-deputy-insurance-commissioner/). A spokesperson for the OIC explained, "We want to make
15 sure we maintain a fair and impartial process going forward." *Id.*

16 On May 27, 2014, Judge Petersen wrote to Commissioner Kreidler, admitting that she
17 had sent the ex parte communication to Mr. Madden. *See* Payton, Decl., Ex. B (Letter from
18 Patricia Petersen to Mike Kreidler, May 27, 2014). She claimed that she "inadvertently" sent
19 the complaint to Mr. Madden because she "did not recognize [his name] as having ever
20 appeared before [her]." *Id.* She further explained that she did not recognize Mr. Madden's
21 name because "he had appeared before [her] only once for a short while in the SCH case and
22 was one among some 13 attorneys before [her] at the time representing either SCH or another
23 of several parties in the SCH case." *Id.* She claimed that she sent the whistleblower
24 complaint to Mr. Madden to discuss possible legal representation, and that he was one of
25 twenty attorneys she had been referred to as potential counsel. *Id.*

26 However, contrary to Judge Petersen's characterization of Mr. Madden's appearances

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 8**

13-0293

100407.0434/6039736.1

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1 before her, Mr. Madden, as explained above, has appeared no fewer than five times before
2 Judge Petersen in this action. Further, contrary to her representations in her letter to
3 Commissioner Kreidler, Mr. Madden's appearances were not short. Indeed, the February 3,
4 2014 oral argument lasted two hours, thirty two minutes and the May 14, 2014 pre-hearing
5 conferenced lasted 28 minutes. See Oral Argument, (Feb. 3, 2014), available at
6 [http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/documents/SCHFeb3Motions.MP3)
7 [proceedings/documents/SCHFeb3Motions.MP3](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/documents/SCHFeb3Motions.MP3); see also Pre-Hearing Conference (May 14,
8 2014), available at [http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/May14PHC5.MP3)
9 [proceedings/s-t/May14PHC5.MP3](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/May14PHC5.MP3).

10 The Office Depot employee who sent Judge Petersen's email was deposed on May
11 28, 2014. See Payton Decl., Ex. C (Snyder Dep. Tr., May 28, 2104). The employee,
12 Timothy Snyder, testified about Judge Petersen's behavior. He said that Judge Petersen
13 refused to give her name as a sender on the email, demanding that he note that the email was
14 sent merely from "a customer." Snyder Dep. at 15:20. Mr. Snyder said that Judge Petersen
15 "definitely seemed hesitant to provide" her name. *Id.* at 16:9. He described her as "a bit
16 agitated." *Id.* at 16:3. Finally, Mr. Snyder confirmed that it was the customer, Judge
17 Petersen, who dictated the subject line of the email to Mr. Madden, "Ex parte
18 communications in Seattle - Children's Hospital case." *Id.* at 32:1-3. According to the
19 receipt of the transaction, there was just one transaction, meaning that Judge Petersen did not
20 send the document to anyone other than Mr. Madden, despite the fact that she claims she was
21 given a list of twenty attorneys for possible representation. Payton Decl., Ex. D (Snyder
22 Dep., Ex. 2).

23 III. ARGUMENT

24 A. Judge Petersen's Ex Parte Contact with Mr. Madden Required Her Recusal.

25 Judge Petersen's ex parte contact with Mr. Madden required her recusal because
26 under the relevant test, her ex parte contact and the surrounding circumstances show bias

MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 9

13-0293

100407.0434/6039736.1

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1 toward SCH and against the OIC and Intervenors.

2 “Judges should accord to every person who is legally interested in a proceeding, or
3 that person's lawyer, full right to be heard according to law, and, except as authorized by law,
4 neither initiate nor consider ex parte or other communications concerning a pending or
5 impending proceeding.” *State v. Davis*, 175 Wn.2d 287, 306, 290 P.3d 43 (2012).³ “[E]x
6 parte communication” means “communication between counsel and the court when opposing
7 counsel is not present.” *Id.* (internal citations and quotation marks deleted). An ex parte
8 communication does not automatically warrant recusal, but “[j]udges should disqualify
9 themselves in a proceeding in which their impartiality might reasonably be questioned.” *Id.*
10 (internal citations and quotation marks deleted). “The test for determining whether the
11 judge’s impartiality might reasonably be questioned is an objective test that assumes that ‘a
12 reasonable person knows and understands all the relevant facts.’” *Id.* (quoting *Sherman v.*
13 *State*, 128 Wn.2d 164, 205, 905 P.2d 355 (1995) (quoting *In re Drexel Burnham Lambert*,
14 861 F.2d 1307, 1313 (2d Cir. 1988))).

15 In *Sherman*, our Supreme Court held that a judge engaged in prohibited ex parte
16 contact when, at the judge’s request, a judicial extern called an organization that played a key
17 role in the case and discussed general procedures for monitoring people in the plaintiff’s
18 position. This ex parte communication warranted recusal, the Supreme Court concluded,
19 “because the judge ‘may have inadvertently obtained information critical to a central issue on
20 remand,’ leading a reasonable person to question his impartiality.” *Sherman*, 128 Wn.2d at
21 206.

22 Here, there is no legitimate question that Judge Petersen’s impartiality must be
23 questioned. Judge Petersen sent to SCH’s counsel, Michael Madden, a private

24 _____
25 ³ Washington’s Canon of Judicial Conduct was revised and updated in 2011. The former Canon 3(A)(4) has
26 since been replaced by Rule 2.9 of the Code of Judicial Conduct (effective Jan. 1, 2011). Rule 2.9 similarly
provides that “[a] judge shall not initiate, permit, or consider ex parte communications, or consider other
communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or
impending matter.” Rule 2.9 does set forth limited exceptions to this rule, none of which apply here.

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 10**

13-0293

100407.0434/6039736.1

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1 communication about purported ex parte OIC contacts with her. This documentation
2 described in great detail how from September 6, 2013 onward, she believes she was the
3 victim of ex parte communications and influence before and during each stage of this action.
4 She described the actions of the OIC employee who allegedly applied this pressure to her as
5 “serious improper governmental action.”

6 Although the fact that she emailed Mr. Madden her whistleblower complaint is
7 uncontroverted, we are left to question her motivation in sending the document to SCH
8 counsel alone. Judge Petersen contends that she “inadvertently” sent the communication to
9 Mr. Madden without recognizing him as a party to the case. This explanation is not
10 plausible, considering that he had appeared before her in this matter at least five times, and
11 less than a month prior. And even if we accept Judge Petersen’s explanation in total, it does
12 not excuse her action. Inadvertence is not relevant to a finding of ex parte contact. “[T]he
13 content of the communication is key in evaluating whether the judge appears partial for
14 purposes.” *Davis*, 175 Wn.2d at 308.

15 The record may never be clear on Judge Petersen’s motivations- but the *appearance*
16 of bias is undeniable. The allegations in her motion regarding ex parte contact by
17 Commissioner Odiorne and her action in filing a whistleblower complaint alone place her
18 impartiality in question—at the very least, these actions are evidence of a protracted battle
19 with her supervisor that could lead to an appearance of bias. The fact of her ex parte contact
20 with SCH compounds the issue, leading to an appearance of partiality toward SCH. Finally,
21 an appearance of impropriety is exacerbated by her initial lack of candor at the May 14, 2014
22 hearing about whether she had sent the ex parte communication to SCH’s counsel.

23 Judge Petersen’s ex parte contact with Mr. Madden and her surrounding conduct
24 show bias toward SCH and against the OIC and intervenors. Therefore, her recusal was
25 warranted.

26 **B. Judge Petersen’s Prior Decisions Must Be Vacated.**

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 11
13-0293**

100407.0434/6039736.1

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1 Judge Petersen's orders are tainted by her appearance of impartiality and must be
2 vacated as a matter of law. Under CR 60(b)(11), the new hearing officer may now vacate
3 Judge Petersen's orders. A tribunal may vacate an order or judgment for any reason that
4 justifies relief. *Cf. B & J Roofing, Inc. v. Board of Indus. Ins. Appeals*, 66 Wn. App. 871,
5 875-876, 832 P.2d 1386 (1992) (applying the Washington Superior Court Civil Rules to an
6 administrative proceeding) (citing WAC 263-12-125). CR 60(b)(11) and its counterpart
7 Federal Rule of Civil Procedure 60(b)(6) provide courts with authority "adequate to enable
8 them to vacate judgments whenever such action is appropriate to accomplish justice."
9 *Klapprott v. United States*, 335 U.S. 601, 614-15 (1949).

10 The Washington Supreme Court has looked to federal courts for guidance in these
11 situations. When deciding whether to vacate a judgment or order entered by a judge recused
12 for appearance of partiality, federal courts have held that a court should consider: (1) "the
13 risk of injustice to the parties in the particular case"; (2) "the risk that the denial of relief will
14 produce injustice in other cases"; and (3) "the risk of undermining the public's confidence in
15 the judicial process." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988);
16 *see also Suburban Janitorial Services v. Clarke American*, 72 Wn. App. 302, 313, n.19, 863
17 P.2d 1377 (1993) (citing *Liljeberg* with approval, explaining that in *Liljeberg*, the "Supreme
18 Court determined that extraordinary circumstances existed where lower court judge should
19 have recused himself such that Rule 60(b)(6) permitted vacation of the final judgment").

20 There need not be "evidence of actual bias on the part of the Judge, that is not [the]
21 standard; instead [courts] ask whether the record suffices to show that the Judge's
22 impartiality may be reasonably questioned." *In re Apollo*, 535 F. App'x 169, 174 (3d Cir.
23 2013) (vacating order granting motion to dismiss where judge served on civil board with
24 plaintiff and other individuals involved with the case and refused to recuse herself); *see also*
25 *United States v. Cerceda*, 172 F.3d 806, 813 (11th Cir. 1999) (explaining "the party seeking
26 vacatur is not required to prove that the judge's potential bias actually prejudiced it by

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 12**

13-0293

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1 showing, for example, that certain rulings of the judge were erroneous and that the errors
2 were in some way attributable to the judge's potential bias"). Thus, the "test for determining
3 whether the judge's impartiality might reasonably be questioned is an objective test that
4 assumes that a reasonable person knows and understands all the relevant facts." *Sherman v.*
5 *State*, 128 Wn. 2d at 206.

6 Considering the three *Liljeberg* factors, all of Judge Petersen's rulings after
7 September 6, 2013 should be vacated, as the record in this case—including Judge Petersen's
8 own words—demonstrates ample cause to question her impartiality. Judge Petersen believed
9 that she was the target of "serious improper governmental action" and "gross
10 mismanagement." Payton Decl., Ex. E (Snyder Dep., Ex. 3). She wrote, in an ex parte
11 communication, that she felt "quite intimidated" and that she feared that her actions would
12 deprive her of a "positive work performance evaluation." *Id.* She herself admitted that she
13 felt that the actions would "deprive[] the public of their right to . . . final decisions made by
14 an impartial presiding officer." *Id.* Regardless of the merits of Judge Petersen's accusations
15 (and it should be noted that the State Auditor's Officer declined to pursue her allegations), an
16 objective observer would reasonably conclude that Judge Petersen had deep-seated and pre-
17 disposed sentiments about the OIC's participation in this action.

18 Therefore, any ruling or order that she issued while harboring such opinions would
19 necessarily risk injustice to the party that she blames for such behavior. According to Judge
20 Petersen, she has been the target of intimidation, harassment and "serious improper
21 governmental action" since September 2013. Since that time, she believes she has been
22 relentlessly pushed to decide the case in a particular way by her employer. Her account gives
23 rise to the reasonable question of whether the rulings she made under this pressure were
24 biased against that same employer. Even putting aside Judge Petersen's strongly-worded
25 characterization of events, her ex parte communication with Mr. Madden alone was sufficient
26 to place her partiality in question and to require reversal and vacation of her previous orders.

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 13**

13-0293

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1 See *United States v. Greatting*, 66 M.J. 226, 231-32 (C.A.A.F. 2008) (finding that defendant
2 seeking reversal had satisfied the first *Liljeberg* prong where the military judge had ex parte
3 conversations with the staff judge advocate of a companion case); *In re M.C.*, 8 A.3d 1215,
4 1233 (D.C. 2010) (reversing trial judge's previous rulings after she refused to recuse herself
5 despite having received ex parte communications about a key witness).

6 On the second factor, denying the relief of vacating Judge Petersen's prior orders will
7 not produce injustice in future cases. The second *Liljeberg* factor "weighs in favor of
8 vacating the judgment when doing so would encourage a judge or litigant to more carefully
9 examine possible grounds for disqualification and to promptly disclose them when
10 discovered." *Cerceda*, 172 F.3d at 815; see also *Tierney v. Four H Land Co. Ltd. P'ship*, 281
11 Neb. 658, 672, 798 N.W.2d 586 (2011) (vacating prior orders of a judge who admitted bias
12 against plaintiffs' attorney, explaining that "[g]iven the importance of the charge of bias,
13 relief in this case will prevent injustice in some future case by encouraging judges and
14 litigants to more carefully examine possible grounds for bias and promptly disclose them
15 when discovered"). Thus, reversing Judge Petersen's prior orders will be beneficial in that it
16 will encourage future judges and hearings officers to recuse themselves immediately
17 following disqualification grounds. Judge Petersen alleged that the inappropriate contact
18 occurred starting in September 2013, but did not disclose such contact until over seven
19 months later.

20 Finally, on the third factor, the appearance of partiality carries the risk of
21 undermining the public's confidence in the judicial process. See *Shell Oil Co. v. United*
22 *States*, 672 F.3d 1283, 1294 (Fed. Cir. 2012) (finding that judge's failure to recuse himself
23 from entire action on grounds of financial interest was not harmless error because of the risk
24 of undermining the public's confidence in the judicial process). The third *Liljeberg* factor
25 focuses solely on the public's perception of the judge's partiality. As such, the propriety (or
26 lack thereof) of Judge Petersen's actions are irrelevant to this inquiry. *United States v.*

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 14**

13-0293

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1 *Amico*, 486 F.3d 764, 777-78 (2d Cir. 2007) (applying the third *Liljeberg* factor and
2 explaining, “[w]hile it is certainly understandable that the judge would seek to defend
3 himself from such accusations, our concern here must properly focus on the public’s
4 perception.”) While judicial impartiality is always a public concern, this instant action has a
5 particularly important bearing on the public as it stands to affect the health insurance plans of
6 tens of thousands of Washington citizens. Judge Petersen’s rulings could stand to deprive
7 those citizens of their chosen health care plans, and thus her impartiality was especially vital.
8 In addition, it is particularly important that the Hearings Unit consider the public’s
9 confidence in the judicial process in this action where Judge Petersen’s actions have received
10 extensive press coverage. *See, e.g.*, Carol M. Ostrom, *Kreidler Removes Hearings Officer in*
11 *Seattle Children’s Case*, *Seattle Times*, May 14, 2014, available at
12 [http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-](http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-deputy-insurance-commissioner/)
13 [deputy-insurance-commissioner/](http://blogs.seattletimes.com/healthcarecheckup/2014/05/14/hearings-officer-chastises-deputy-insurance-commissioner/); Valerie Bauman, *The Whistleblowing Judge, the Office*
14 *Depot Tipster – and why the Health Care Industry Can’t Stop Watching*, May 20, 2014,
15 available at [http://www.bizjournals.com/seattle/blog/health-care-inc/2014/05/the-](http://www.bizjournals.com/seattle/blog/health-care-inc/2014/05/the-whistleblowing-judge-the-office-depot-tipster.html)
16 [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*
17 *Complaint*, Associated Press, May 21, 2014, available at
18 [http://www.kirotv.com/ap/ap/washington/auditor-wont-investigate-whistleblower-](http://www.kirotv.com/ap/ap/washington/auditor-wont-investigate-whistleblower-complaint/nf5K6/)
19 [complaint/nf5K6/](http://www.kirotv.com/ap/ap/washington/auditor-wont-investigate-whistleblower-complaint/nf5K6/).

20 IV. CONCLUSION

21 Here the factors dictate that Judge Petersen’s orders be vacated. She alleges that the
22 purported ex parte contact by the OIC began on September 6, 2013. Thus, her current
23 partiality that has now become evident has continued since before she issued any order in this
24 case. Her orders on the dispositive motions must be struck. Moreover, even non-dispositive
25 reports that at all shape the litigation must similarly be struck, including Judge Petersen’s
26 May 5, 2014 statement of issues. *See In re Kempthorne*, 449 F.3d 1265, 1271 (D.C. Cir.

**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN’S
ORDERS - 15
13-0293**

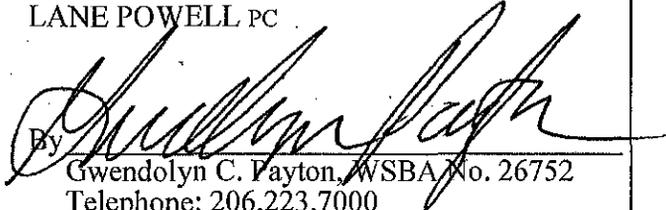
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1 2006) (suppressing and vacating all reports of a special master where that special master had
2 inappropriately engaged the services of an interested party even where the district court had
3 not adopted all such reports because once the actions that required disqualification occurred,
4 all subsequent work product was tainted).

5
6 DATED: June 10, 2014

7 LANE POWELL PC

8 
9 By _____

Gwendolyn C. Payton, WSBA No. 26752

Telephone: 206.223.7000

Facsimile: 206.223.7107

Attorney for Premera Blue Cross

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**MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S
ORDERS - 16
13-0293**

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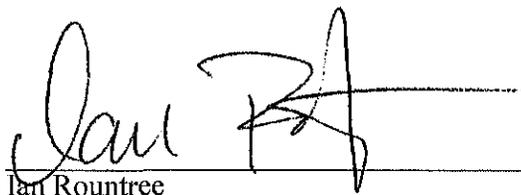
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CERTIFICATE OF SERVICE

I, Ian Rountree, hereby certify under penalty of perjury of the laws of the State of Washington that on June 10, 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
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 Ian Rountree

MOTION TO VACATE CHIEF PRESIDING OFFICER PETERSEN'S ORDERS - 17
13-0293

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2014 JUN 11 A 9 26

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

**DECLARATION OF GWENDOLYN
PAYTON IN SUPPORT OF MOTION
TO VACATE CHIEF PRESIDING
OFFICER PETERSEN'S ORDERS**

I, Gwendolyn Payton, declare as follows:

1. I am a partner with the law firm of Lane Powell PC. I am lead counsel for Premera in this action, and I have been counsel of record for Premera for the entirety of this matter. I have personal knowledge of the matters asserted herein and am otherwise qualified to testify.

2. The Chief Presiding Officer, Patricia Petersen ("Judge Petersen"), held a pre-hearing conference on November 18, 2013. I appeared and spoke on behalf of Premera and Michael Madden, counsel for Seattle Children's Hospital ("SCH"), appeared and spoke on behalf of SCH at that conference.

3. Judge Petersen held another pre-hearing conference on April 14, 2014. Again, I appeared and spoke on behalf of Premera and Mr. Madden appeared and spoke on behalf of SCH at that conference. That hearing lasted approximately two and a half hours.

4. Judge Petersen held a pre-hearing conference on April 21, 2014 and

**PAYTON DECLARATION IN SUPPORT OF MOTION TO VACATE
CHIEF PRESIDING OFFICER PETERSEN'S ORDERS - 1
DOCKET NO. 13-0293**

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1 participated in that conference. I appeared and spoke on behalf of Premera and Mr. Madden
2 appeared and spoke on behalf of SCH at that conference.

3 5. In addition to those hearings, there were at least two other hearings before
4 Judge Petersen where both I and Mr. Madden appeared and spoke. On February 3, 2014,
5 Judge Petersen held oral arguments on the dispositive motions and on May 14, 2014, the
6 parties participated in a pre-hearing conference before Judge Petersen. Audio recordings of
7 both those hearings can be found on the OIC's website at [http://www.insurance.wa.gov/laws-](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/)
8 [rules/administrative-hearings/judicial-proceedings/s-t/](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/s-t/).

9 6. Attached hereto as Exhibit A is a true and correct copy of the May 5, 2014
10 letter setting forth the "issues to be addressed at hearing" from Judge Petersen to counsel of
11 record in this action, including Mr. Madden.

12 7. Attached hereto as Exhibit B is a true and correct copy of the May 27, 2014
13 letter from Judge Petersen to Insurance Commissioner Mike Kreidler. In that email, Judge
14 Petersen admits that she sent the whistleblower complaint email to Mr. Madden.

15 8. Attached hereto as Exhibit C is a true and correct copy of relevant excerpts
16 from the transcript from the deposition of Timothy Snyder, the clerk from Office Depot who
17 sent the email to Mr. Madden at the direction of Judge Petersen.

18 9. Attached hereto as Exhibit D is a true and correct copy of Exhibit 2 to Mr.
19 Snyder's deposition. Mr. Snyder testified that this exhibit is a copy of the receipt of Judge
20 Petersen's transaction wherein she asked Mr. Snyder to email a document (later revealed to
21 be her whistleblower complaint) to Mr. Madden. It appears from this receipt that there was
22 just one transaction—meaning that Judge Petersen only emailed the whistleblower complaint
23 to one recipient, Mr. Madden.

24 10. Attached hereto as Exhibit E is a true and correct copy of Exhibit 3 to Mr.
25 Snyder's deposition. This is a copy of the actual email that Judge Petersen had Mr. Snyder
26 send to Mr. Madden. I got a copy of this directly from Mr. Madden. The attachment to this

**PAYTON DECLARATION IN SUPPORT OF MOTION TO VACATE
CHIEF PRESIDING OFFICER PETERSEN'S ORDERS - 2
DOCKET NO. 13-0293**

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1 email appears to be a print-out of the "State of Washington Whistleblower Reporting Form"
2 that Judge Petersen completed to report Mr. Odiorne to the State Auditor's Office and an
3 addendum with the information that would not fit into the space provided by the online form.
4 The document originally included Judge Petersen's personal contact information, but I have
5 redacted that from the document.

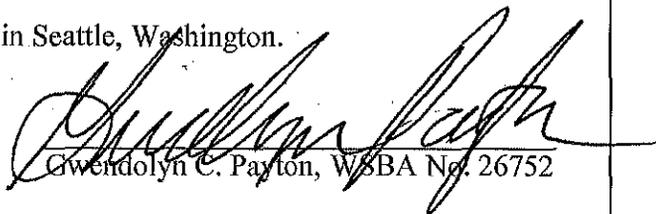
6 11. Attached hereto as Exhibit F is a true and correct copy of the online profile of
7 Judge Petersen's husband, as found at [http://health.usnews.com/doctors/dana-petersen-](http://health.usnews.com/doctors/dana-petersen-268708)
8 268708 on June 9, 2014.

9 12. Attached hereto as Exhibit G is a true and correct copy of the March 21, 2014
10 letter from AnnaLisa Gellerman, counsel for Office of the Insurance Commissioner, to Judge
11 Petersen, cc'ing all counsel in this action. In this email, Ms. Gellerman raised to Judge
12 Petersen that Judge Petersen may have a conflict of interest in this matter because her
13 husband was affiliated with SCH.

14 13. Attached hereto as Exhibit H is a true and correct copy of the March 26, 2014
15 letter from Judge Petersen to all counsel in this action. Here, Judge Petersen responded to
16 Ms. Gellerman's email. Judge Petersen wrote that she did not believe that the facts raised by
17 Ms. Gellerman's email would affect her impartiality.

18 I declared under penalty of perjury under the laws of the state of Washington that the
19 foregoing is true and correct.

20 DATED this 10th day of June, 2014 in Seattle, Washington.

21
22 
Gwendolyn C. Payton, WSBA No. 26752

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**PAYTON DECLARATION IN SUPPORT OF MOTION TO VACATE
CHIEF PRESIDING OFFICER PETERSEN'S ORDERS - 3
DOCKET NO. 13-0293**

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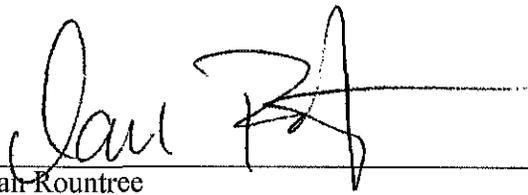
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CERTIFICATE OF SERVICE

I, Ian Rountree, hereby certify under penalty of perjury of the laws of the State of Washington that on June 10, 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</u> <u>Commissioner</u> Charles Brown P.O. Box 40255 Olympia, WA 98504-0255 Email: charlesb@oic.wa.gov</p>

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Ian Rountree

**PAYTON DECLARATION IN SUPPORT OF MOTION TO VACATE
CHIEF PRESIDING OFFICER PETERSEN'S ORDERS - 4
DOCKET NO. 13-0293**

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EXHIBIT A

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



OFFICE OF
INSURANCE COMMISSIONER

Phone (360) 726-7000
www.insurance.wa.gov

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COMMUNICATIONS SECTION
OFFICE OF THE INSURANCE COMMISSIONER

May 5, 2014

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Office of Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Michael Madden, Esq.
Bennett, Bigelow & Leedom, P.S.
601 Union Street, Suite 1500
Seattle, WA 98101

Gwendolyn C. Payton
Lane Powell, PC
1420 Fifth Avenue, Suite 4200
Seattle, WA 98111-9402

Timothy J. Parker, Esq.
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104

SUBJECT: Seattle Children's Hospital, Docket No. 13-0293

Dear Counsel:

This letter is relative to clarifying the issues to be addressed at hearing. Based upon the SCH's, OIC's and Intervenors' written submissions made on April 16, April 18 and April 18, respectively, and upon review of same and argument and input of the parties during prehearing conference held April 21, below are the issues to be addressed at hearing which I believe properly incorporates all parties' submissions and concerns. As indicated, a few are somewhat duplicative but where this is the case then they need not be addressed twice during hearing. As indicated, in Seattle Children's Hospital's Motion to Set Hearing Date and Pre-Hearing Schedule, and for Protective Order filed April 2, SCH has requested that this hearing be scheduled for June 9-11, 2014. Accordingly, as stated during the recent prehearing conferences, these dates are being held open for this proceeding and it is anticipated that the hearing will be scheduled shortly to commence on June 9. Alternatively, we are holding the entire weeks of June 9-13 and the entire week of June 16-20 open in order to provide some flexibility of hearing dates if necessary.

Legal Issues (all apply to Intervenor's filings for 2014):

1. As the appealing party, does SCH bear the burden of proving that the OIC's decision to approve the Intervenor's Exchange Plan Networks was incorrect?
 - a. What is the standard of review that should be applied?
2. In the event that the Intervenor's networks as approved for the 2014 plan year are found to be inadequate without inclusion of SCH, what remedy can be directed by the Presiding Officer?
 - a. The remedy sought by SCH is "revocation or reversal of the OIC's approval of these Exchange plans because their networks are inadequate." Other options: Require OIC staff reconsideration of the approvals; imposition of a stay of the approvals unless and until the networks are re-reviewed and approved; vacation of the approvals and remand of the network filings to the OIC for review.
 - b. Does the proceeding affect the WA Exchange and CMS's federal approval of these networks? (The parties agree that the WA Health Care Exchange and federal authorities at least to some extent relied on the OIC's review of the filings and decisions to approve them.)
 - c. To the extent it is reasonable, this issue of available remedies includes a consideration of the positive and negative impacts on the insurance market and enrollees, including the question of whether Intervenor's members are receiving medically necessary services during the 2014 plan year.
3. As of the approval date of July 31, 2013, did Intervenor's filings meet the requirements of federal and state law (the federal ACA, relevant sections of the Washington State Insurance Code, and regulations applicable thereto)? In addition, in deciding this issue, relevant federal and state guidance and official communications will be considered and given their appropriate weight.
 - a. Re Essential Community Providers (ECPs): Do Intervenor's 2014 Exchange plans satisfy the federal and state (if any) requirement(s) to include ECPs in their networks if their networks include the minimum number of ECPs in each required ECP category (specified by the ACA, and regulations and ECP guidance promulgated pursuant to the ACA by the Secretary of the U.S. HHS and any other authoritative sources)?
 - b. Re Essential Health Benefits (EHBs): Do Intervenor's 2014 Exchange plans satisfy federal and state requirements regarding enrollee coverage, including the Essential Health Benefits and access standards?

- b. Did the OIC correctly determine that Bridgespan's network adequately provided coverage for all essential health benefits when it contractually guaranteed in its insurance contracts with its members/enrollees to enter into single case agreements for unique and non-unique services not available from contracted providers to ensure treatment at a cost to enrollees equal to in-network rates?
- i. In practice, is this contractual guarantee in its insurance contracts with its members/enrollees, and does it ensure adequate access to coverage required by federal and state law?
- c. Did the OIC correctly determine that Premera's network adequately provided coverage for all essential health benefits when it contractually guaranteed in its insurance contracts with its members/enrollees to enter into single case agreements for unique and non-unique services not available from contracted providers to ensure treatment at a cost to enrollees equal to in-network rates?
- i. In practice, is this contractual guarantee in its insurance contracts with its members/enrollees, and does it ensure adequate access to coverage required by federal and state law?

SCH's Factual Issues (if relevant to the above stated legal issues):

1. What EHB pediatric services are uniquely available at SCH?
2. What is the level of demand for EHB pediatric services in SCH's service area?
3. What is the capacity of other facilities in SCH's service area to provide EHB pediatric services?
4. Has SCH refused to contract with the Intervenors at generally applicable payment rates or refused to contract under reasonable terms and conditions?
5. What are the consequences of omitting SCH from the Intervenors' networks?
6. To what extent, if any, was the OIC aware of the facts relevant to questions B-F when it approved the Intervenors' plans?

Finally, on April 30, 2014, I received and filed SCH's Amended Demand for Hearing, which documents that SCH is no longer pursuing its demand for hearing regarding the OIC's approvals of Coordinated Care's rate filing and further states that *[w]hile the outcome of this case is still of great interest to Coordinated Care, it no longer has a directly-affected plan in the 2014 Health Exchange*. Additionally, on May 5, 2014, I received and filed Stipulation to Coordinated Care Corporation's Withdrawal as Intervenor executed by all parties which documents that SCH and Coordinated Care have reached an agreement and that SCH has filed its Amended Demand for

Seattle Children's Hospital

May 5, 2014

Page Two

Hearing eliminating the issues of the OIC's approval of Coordinated Care's Exchange filing. Therefore, on the basis of this Amended Demand for Hearing and Stipulation, on this date I entered and filed the parties' [Proposed] Order Authorizing Coordinated Care Corporation's Withdrawal of Intervenor.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia D. Petersen", written in black ink.

Patricia D. Petersen
Chief Presiding Officer

EXHIBIT B

May 27, 2014

Commissioner Mike Kreidler
5000 Capitol Blvd
Tumwater, WA 98501

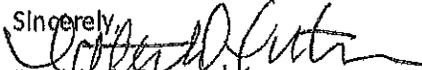


Personal and Confidential

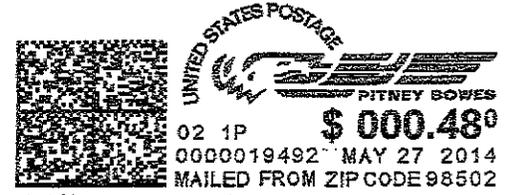
Dear Commissioner Kreidler:

On May 13, 2014, as the Presiding Officer in the Seattle Children's Hospital case, I filed a Notice of Receipt of Ex Parte Communications from the Office of the Insurance Commissioner as I was required to do under RCW 34.05.355. On May 14 at 4 p.m., you called me to your office for a brief private conversation. At that time, as you were delivering me your letter revoking my delegation of authority to serve as Chief Presiding Officer for the agency and placing me on administrative leave, you asked me whether I had sent a copy of my Whistleblower Report to one of the parties in the Seattle Children's Hospital (SCH) case. I responded that while I had sent it to several of my advisors, I had not sent it to a party in the SCH case and that I would have no interest in doing so for many reasons. At that time, I believed that my statement to you was accurate.

However, since early May as the ex parte communications from Mr. Odlorne to me became worse, I had been advised that I should retain an attorney to represent my employment interests. From several sources, I was furnished with the names of over 20 attorneys familiar with both health care and ethics, among them was Michael Madden. Because he had appeared before me only once for a short while in the SCH case and was among some 13 attorneys before me at that time representing either SCH or another of the several parties in the SCH case, and because neither he, his co-counsel or his firm to my knowledge has ever handled a case before me before, his name was one I did not recognize as having ever appeared before me. For this reason I sent him a copy of my Whistleblower Report to give him a notion of my problem so we could discuss the issues I was facing should I seek to retain him personally. As I have never had either fax or scan-to-email access from my home, and because it would be impermissible for me to send it from my OIC office, I sent it from the Office Depot. I fairly regularly use Office Depot because it is the shortest distance from both my home and work. Once again, for many reasons I would have had no interest in sending this copy to Mr. Madden had I realized he was one of the attorneys representing a party in the SCH case. In addition, just some hours earlier that day, my paralegal sent Mr. Madden and the other approximately 10 attorneys in the SCH case a copy of my Notice of Disclosure of Ex Parte Communications which contained the same information. I now believe that I did inadvertently send a copy of the Whistleblower complaint to an attorney in the SCH case although I did not realize this until just recently.

Sincerely,

Patricia D. Petersen

TACOMA
WA 983
27 MAY '14
PM 2 L



Received
JUN -2 2014
Insurance Commissioner

Sue H.
CONFIDENTIAL

Commissioner Mike Kreidler
5000 Capitol Blvd
Turnwater, WA 98501

98501442600

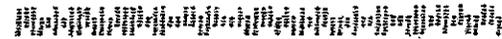


EXHIBIT C

STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

)
)
)
In re) NO. 13-0293
)
Seattle Children's Hospital's Appeal of)
OIC's Approvals of HBE Plan Filings)
)
)
)

DEPOSITION UPON ORAL EXAMINATION OF
TIMOTHY SNYDER
May 28, 2014
Olympia, Washington

Taken Before:
PAMELA J. DALTHORP, CCR No. 2948
Certified Court Reporter
OF
CAPITOL PACIFIC REPORTING, INC.
2401 Bristol Court S.W., Suite C-103
Olympia, WA 98502
Phone: 360/352-2054
Fax: 360/705-6539
Toll Free: 1-800-407-0148
E-mail: admin@capitolpacificreporting.com

1 customer about the content of the e-mail attachment?

2 A No.

3 Q Okay. How long would you say the customer was at the counter
4 during this transaction?

5 A It was very brief. I would say no more than about maybe
6 three to four minutes.

7 Q Can you relate to me as best you recall the conversation you
8 had with her?

9 A Yes. Essentially the first part of the transaction, as it
10 makes sense, was merely the request to scan the documents,
11 which I did so. And then afterwards, which I normally do, as
12 you had brought up in my e-mail, I usually prepare my e-mails
13 when sending to another e-mail rough verbiage to make sure we
14 do not get any private correspondence; if it is something
15 that is private, that we do not get any personal information
16 to our e-mail work address.

17 And during that time I asked for a name, which is
18 customary, so the person receiving it would have it, and the
19 person did not want to give their name, which is why it had
20 "a customer," because it was written as intended for a name
21 to be there. And so I didn't push it because it's not
22 terribly uncommon not to include names. I don't necessarily
23 know the e-mail address; obviously there's no way for me to
24 know what it is. So it could have been personal; it could
25 have been a work e-mail address.

1 But beyond that there was an expression of concern to
2 ensure that the e-mail was sent, and so I had stated that she
3 had -- she was a bit agitated. The word is difficult to
4 describe, but she was definitely interested in making sure
5 the e-mail was sent. But otherwise just of course the
6 repeating of the amount due, repeating of course the cash she
7 gave, repeating the change back and the confirmation.

8 I also recall that I had stated not knowing her name to
9 begin with, because she definitely seemed hesitant to provide
10 that.

11 Q Was she wearing anything that identified her?

12 A The only identity that she had that I was able to notice was
13 that there was a name badge that was present on her shirt or
14 jacket; however, it was flipped backwards and so the solid
15 white backside was present. So while there was
16 identification present, she did not print her name
17 intentionally and so there was no way to identify her through
18 that means.

19 Q Do you recall if the identification badge was clipped to her
20 clothing or hanging around her neck?

21 A It was clipped to clothing, either a pocket or perhaps the
22 collar of a jacket or shirt.

23 Q And the color of the identification badge?

24 A The back of it was white. I assume the front of it most
25 likely was a solid white as well, but I do not know what was

1 in this e-mail, that title is "Ex parte communications in
2 Seattle - Children's Hospital case"?

3 A Yes.

4 Q Did you compose and put that subject line in without
5 discussion or --

6 A I typed it by request.

7 Q Okay. So you were requested by the customer to put that
8 subject line in this e-mail?

9 A Yes, I asked for a name of the individual for the e-mail
10 title and that was what they provided.

11 Q Okay. Do you know what ex parte communications are?

12 A No.

13 Q So you typed that by dictation?

14 A Correct, I was asked to do so.

15 Q Okay. And then I would like to show you something. I'm
16 afraid it's not officially marked as an exhibit.

17 (Indicating.) You talked about a white rectangular card --

18 A Yes.

19 Q -- worn by the individual and clipped. And I'm just going to
20 put this on me and tell me where it was clipped. So I'm now
21 placing it on my left collarbone, essentially, in a portrait
22 position. Was it clipped in that way?

23 A Yes.

24 Q What I'm holding up before you is essentially a square white
25 laminate. It is not actually an ID badge. If I flip it

EXHIBIT D

OFFICE DEPOT STORE 658
1620 Cooper Point RD SW
Dixonia VA 98502
(360) 352-2426

05/13/2014 14.1.5 5:24 PM
STR 658 REG4 TRN 4753 EMP 637575

***** REPRINT *****

Reprint Transaction # 06580515140044982

SALE

Product ID	Description	Total
751095	SCANNING, DOC	
13 @ 0.25		3.25
You Pay		3.25SS

Sales Tax: 0.29
Total: 3.54
Cash: 5.00
CHANGE: (1.46)

Shop online at www.officedepot.com

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Participate in our online customer survey
and receive a coupon for \$10 off your
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household/business.)

Visit www.officedepot.com/feedback
and enter the survey code below.

Survey Code:

NAOH 8DTP ATH7



22VT333PYX3448MBE

EXHIBIT No. 2 Date 5-28-14
Deposition Of TIM SNYDER
PAM DALTHORP Court Reporter

EXHIBIT E

From: CPC Ods00658Cpc [mailto:ods00658cpc@officedepot.com]
Sent: Tuesday, May 13, 2014 5:24 PM
To: Mike Madden
Subject: Ex parte communications in Seattle - Children's Hospital Case

To whom it may concern,

Attached is a PDF scanned document by request of a customer. If you wish to contact this individual, please reach them directly as replying to this email will not be received by them.

--
Timothy R. Snyder

Office Depot
1620 Cooper Point Rd. SW
Olympia, WA 98502
Telephone (360) 352-2426

EXHIBIT No. 3 Date: 5-28-14
Deposition of TIM SNYDER
PAM DALHORN Court Reporter

State of Washington Whistleblower Reporting Form

Your contact information

You are not required to provide your name. However, if you choose not to provide your name, we are unable to keep you updated on the progress of our investigation, or to consult with you regarding the details of your complaint. If you choose to provide your name, we will keep it confidential.

First Name: Patricia
Last Name: Petersen
Street Address: [REDACTED]
City: Olympia
State: WA
Zip Code: 98501
Day Phone: [REDACTED]
Night Phone: [REDACTED]
E-mail: [REDACTED]

How would you prefer to be contacted (check all that apply):

Day Phone Night Phone Email Regular Mail

Agency: Insurance Commissioner, Office of the

Division: Executive

Current position: Chief Presiding Officer

Subject's contact information

Name: James T. Odlorne (required)
Agency: Insurance Commissioner, Office of the (required)
Division: Executive
Position: Chief Deputy Insurance (required)

Location: 5000 Capitol Blvd. SE

Phone: (360) 725-7106

Subject's Supervisors(s): Insurance Commissioner
Mike Kreidler

Supervisor's Position(s): Washington State
Insurance Commissioner

Supervisor's Phone: (800) 562-6900

Referral information

What type of improper governmental action are you reporting? (required)

Violation of state law or regulation

If so, which RCW(s) or WAC(s) been violated?

RCW 48.04.010 of the Insurance Code provides that any person aggrieved by any act or threatened act of the Insurance Commissioner (Commissioner), or order of the Commissioner, may be contested in an administrative hearing (adjudicative proceeding). WAC 284-02-070(1)(a) provides that hearings of the Office of the Insurance Commissioner (OIC) are conducted according to chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act. WAC 284-02-070(2)(a) provides that provisions applicable to

- Substantial and specific danger to the public health and safety
- Gross waste of public funds
- Gross mismanagement
- Preventing dissemination of scientific opinion or altering technical findings
- Other improper governmental action per state law (Chapter 42.40 RCW)

When and where did the improper governmental action take place?

The improper governmental action has taken place beginning on September 6, 2013 and continues through the current time. The improper governmental action has taken place at the Office of the Insurance Commissioner, 5000 Capitol Blvd., SE Tumwater, WA 98501. (required)

Please describe the improper governmental action in detail. The more detailed information you provide us, the better we will be able to assess your concerns. Improper governmental action cannot be related to personnel matters.

Please note that in my position as Chief Presiding Officer with the Office of the Insurance Commissioner I have never received any prohibited ex parte communication from Insurance Commissioner Kreidler, nor have I received any other form of improper influence or direction from Commissioner Kreidler, to decide the contested cases which come before me in any certain way. However, since September 2013, as presiding officer in all of the contested cases which come before this agency, I have been (required)

Can we find, or can you provide, additional information to support your assertions?

Yes No (required)

If yes, please identify the location of the information or indicate how you will deliver the documentation to us.

I have written contemporaneous notes of the private meetings which Mr. Odiorne has called with me; written statements representing prohibited ex parte communications from Mr. Odiorne to me as the presiding officer; written instructions to me to decide the cases which come before me in favor of the Insurance Commissioner; as well as the several written Memoranda that I have written to Mr. Odiorne explaining why I cannot receive ex parte communications from him and why I cannot communicate with

Are there other witnesses? If so, please provide their contact information.

Yes No (required)

If yes, please provide their contact information.

Mr. Greg Devereaux, Executive Director
Washington Federation of State Employees
1212 Jefferson Street SE
Olympia, WA, 98501
(360) 352-7603

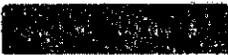
Because all of the private one-on-one meetings which Mr. Odiorne called with me referenced in my discussion above included just him and me behind his closed office doors there are no

How do you know about the information you are disclosing here?

I am the Chief Presiding Officer for the Office of the Insurance Commissioner and all the events related here are ones which I have experienced personally.

Have you already submitted this assertion?

Yes No (required)



Whistleblower Report filed by Patricia D. Petersen, Chief Presiding Officer, Officer of the Insurance Commissioner. (Sent online on Whistleblower Reporting form on May 13, 2014.)
Online form itself cannot be printed in its entirety, so the following are the responses to all of the questions on the Whistleblower Report form:

Laws violated:

RCW 48.04.010 of the Insurance Code provides that any person aggrieved by any act or threatened act of the Insurance Commissioner (Commissioner), or order of the Commissioner, may be contested in an administrative hearing (adjudicative proceeding). WAC 284-02-070(1)(a) provides that hearings of the Office of the Insurance Commissioner (OIC) are conducted according to chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act. WAC 284-02-070(2)(a) provides that provisions applicable to adjudicative proceedings are contained in chapter 48.04 RCW, chapter 34.05 RCW, the Administrative Procedure Act (APA), and chapter 10.08 WAC, regulations adopted pursuant to the Administrative Procedure Act. RCW 34.05.455, part of the Administrative Procedure Act which governs adjudicative proceedings of the OIC specifically prohibits a presiding officer from communicating, directly or indirectly, regarding any issue in the proceeding with any person employed by the agency without notice and opportunity for all parties to participate (with certain exceptions not applicable hereto). The Chief Deputy Insurance Commissioner has violated provisions of title 34.05 RCW, and particularly sections RCW 34.05.455(1) and (3). RCW 34.05.455(1) provides: "(1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding ... with any person employed by the agency without notice and opportunity for all parties to participate " RCW 34.05.455(3) provides: "(3) ... persons to whom a presiding officer may not communicate under subsection[] (1) ... of this section may not communicate with presiding officers without notice and opportunity for all parties to participate. "

Time and location of improper governmental action:

The improper governmental action has taken place beginning on September 6, 2013 and continues through the current time. The improper governmental action has taken place at the Office of the Insurance Commissioner, 5000 Capitol Blvd., SE Tumwater, WA 98501.

10810

Details of improper governmental action:

Please note that in my position as Chief Presiding Officer with the Office of the Insurance Commissioner I have never received any prohibited ex parte communication from Insurance Commissioner Kreidler, nor have I received any other form of improper influence or direction from Commissioner Kreidler, to decide the contested cases which come before me in any certain way. However, since September 2013, as presiding officer in all of the contested cases which come before this agency, I have been the recipient of prohibited ex parte communications and other undue influences from Insurance Commissioner Kreidler's new Chief Deputy Insurance Commissioner, James T. Odiorne, and in point of time and also given the subject of the ex parte communications detailed below I believe these have been to influence my decisions mainly in the cases contesting the Insurance Commissioner's actions relating to the federal Affordable Care Act and Washington Health Care Exchange health contracts to be sold to Washington residents (such as the Seattle Children's Hospital case which is ongoing, and the Coordinated Care Corporation case which was ongoing during his communications with me and also includes the significant issue which is currently under my consideration in the Seattle Children's Hospital case). Mr. Odiorne's actions, in my opinion, constitute serious improper governmental action and stand to have a harmful, unlawful, impact upon Washington consumers and also potentially nationwide because Washington is considered to be a lead state in effectuating the federal Affordable Care Act. Not only do Chief Deputy Insurance Commissioner Odiorne's actions violate RCW 34.05.455, the Administrative Procedure Act, but he is also pressuring me to violate this law as well. In addition, his intent is to influence me to make the outcome of my final decisions as the presiding officer in adjudicative proceedings support the position of the Insurance Commissioner and not the positions of the parties appealing the acts of the Insurance Commissioner. These are cases where aggrieved parties have the right to contest acts of the Insurance Commissioner and receive a fair hearing before an impartial presiding officer; and Mr. Odiorne's behavior violates the law but also deprives the public of their right to due process, fair hearings and final decisions made by an impartial presiding officer.

More specifically, I have conducted and make the final decisions in contested cases coming before the Office of the Insurance Commissioner (OIC) for 28 years, and have been appointed as the Chief Presiding Officer (and the only hearing officer) for the agency for the past 19 years. I was first appointed as Chief Presiding Officer by former Insurance Commissioner Deborah Senn, and for the past over 10 years to the current time I have been appointed as Chief Presiding Officer by Insurance Commissioner Mike Kreidler. I provide the following details as background. In addition, because my position is unique in the agency it is not possible to remain anonymous. Therefore I allow you to disclose my name as appropriate. The following are the statutes which govern this situation and also the details of the improper governmental action:

- RCW 48.04.010 of the Insurance Code provides that any person aggrieved by any act or threatened act of the Commissioner, or order of the Commissioner, may be contested in an administrative hearing (adjudicative proceeding).
- WAC 284-02-070(1)(a) provides that hearings of the OIC are conducted according to chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act.
- WAC 284(2)(a) provides that provisions governing adjudicative proceedings before the OIC are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10.08 WAC, regulations adopted pursuant to the Administrative Procedure Act.
- WAC 284-02-070(2)(d)(i) [and prior WAC 284-02-020] provides that the Insurance Commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a chief presiding officer, and that the Commissioner may appoint a chief presiding officer who will have primary responsibility for the conduct of hearings and the procedural matters preliminary thereto.
- RCW 34.05.455, part of the Administrative Procedure Act that applies to these hearings, provides: (1) A presiding officer may not communicate, directly or indirectly, regarding any issue in the proceeding ... with any person employed by the agency without notice and opportunity for all parties to participate, ... (3) ...persons to whom a presiding officer may not communicate under subsection [(1) of this section may not communicate with presiding officers without notice and opportunity for all parties to participate. ... (5) A presiding officer who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identify of each person from whom the presiding officer received an ex parte communication. The presiding officer shall advise all parties that these matters have been placed on the record. ... (7) The agency shall, and any party may, report any violation of this section to appropriate authorities for any disciplinary proceedings provided by law. ...

In accordance with the Insurance Code and particularly the Administrative Procedure Act (APA) which, as above, governs adjudicative proceedings which come before the OIC, I have conducted all hearings which have come before the OIC and entered final decisions in all cases independently i.e. without advice or input from the Insurance Commissioner, Office of the Insurance Commissioner, (OIC, or agency) staff or any others involved in these cases as required by the APA (and which is as promised on the OIC website and notifications to appellants). [In addition, consistent with the APA, my current Position Description which was signed by Insurance Commissioner Mike Kreidler and then Chief Deputy Insurance Commissioner Mike Watson on 8/20/2012 (and it has been unchanged for many years insofar as is relevant here) states my duty to be "Presides alone and independently over all Insurance entities' administrative appeals which contest acts of the OIC, and all other contested and/or

adjudicative cases which come before the agency. This position is responsible for managing these cases from receipt of an appeal to the issuance of a final order on hearing, including determining right to hearing, hearing arguments and ruling on all preliminary motions, conducting the hearing, and drafting and issuing all final orders without review of any other individual. The proceedings require strict compliance with the Administrative Procedure Act and Washington Rules of Court. The cases are often complex, highly contested and involve significant issues in insurance law with statewide effect." My Position Description further states: "Because this position acts as the Chief Presiding Officer for agency adjudicative hearings, interactions with others to accomplish the work are governed by strict limitations on ex parte communications with other agency staff concerning issues that are the subject of those hearings. Therefore, communication between this position and OIC staff or external parties is limited ... governed by the Administrative Procedure Act, civil procedure (including Rules of Court), and state and federal case law."]

Therefore, as Chief Presiding Officer I have always independently conducted all stages of all adjudicative proceedings which come before the OIC and entered the final decisions in all cases. My decisions are appealed directly to Superior Court where I have never been overturned on appeal. I love my job; I know my skills as an attorney and my long experience first in private litigation, then in insurance regulation are well suited to this work. Beginning in 1984 I served as one of three Deputy Insurance Commissioners in charge of legal affairs, enforcement and consumer protection for the OIC; for the next 9 years I served as a hearing officer for the OIC; and for the most recent 19 years I have served as the Chief Presiding Officer by delegation of the Insurance Commissioner pursuant to WAC 284-02-070(2)(d)(i) and have been the only hearing officer handling all of the cases which come before the OIC. In addition, I have directly reported to over eight Chief Deputy Insurance Commissioners during these years (as required by WAC 284); I have always received very high performance evaluations from each of them without exception. Furthermore, I have never, ever, previously received any prohibited ex parte communications from any of the three Insurance Commissioners for whom I have served as hearing officer and Chief Presiding Officer (including Commissioner Kreidler), from any Chief Deputy Insurance Commissioner, or from other OIC staff or others. In addition, in all of these years the outcome of my decisions has never been a basis of any of my work performance evaluations nor have I ever received any other form of influence which would jeopardize my impartiality as the final decision maker in these contested hearings.

The OIC's compliance with the requirements of title 34 RCW, the Administrative Procedure Act, changed on September 6, 2013, which was six months into the new Chief Deputy's (James T. Odiorne) first year as Chief Deputy Insurance Commissioner. He is a licensed attorney in Texas and Washington, having come to work for the OIC as a contract analyst from the Texas Board of Insurance some years ago. The situation evolved as follows: The federal Affordable Care Act (sometimes called "Obamacare") provides that the Washington State Insurance Commissioner has the responsibility to review all health care coverage contracts from health carriers, to ensure that the contracts comply with both federal and state law, and to either approve or disapprove each by about July 31, 2013. Those which were approved by the Insurance Commissioner Mike Kreidler (Commissioner) were then sent to the Washington State Health

Care Exchange for certification, then to the federal government for certification, and then onto the market for sale to Washington consumers. On July 31, 2013 the Commissioner disapproved the contract filings of health carrier Coordinated Care Corporation (CCC), and CCC appealed the Commissioner's act of disapproving its contract filing because it wanted to be able to sell Exchange health contracts to Washington consumers and it believed it has fully complied with both state and federal laws and therefore that the Commissioner should have approved its Exchange contract filing. I received the Demand for Hearing from CCC on 8/13/2013, and held the hearing on August 26-28, 2013. I entered my final decision (Final Order) in the case on September 3, 2013. After a fair hearing, and based upon my consideration of the evidence and legal arguments presented by both parties at hearing, my Final Order could not support the Commissioner's position. There does seem to be less expertise in the OIC through this past year including during the time the CCC case was being presented because six of the seven Deputy Commissioners had been replaced since Mr. Odlorne became Chief Deputy in March 2013 (including the head of Legal Affairs in charge of representing the Commissioner in these hearings, and the Deputy Commissioner for Rates & Forms which was in charge of review and approval/disapproval of CCC's Exchange contract filing). For example, as detailed in my Final Order in the CCC case, the only significant witness testifying on behalf of the Commissioner was a contract analyst who actually changed her recitation of the facts and also her legal opinion to agree with CCC's position, and not the Commissioner's position, midway through the hearing. Apparently, this was a high profile and newsworthy case (the first case brought in Washington of its kind) and had political ramifications (that are outside my expertise) because my Final Order could not support the Commissioner's position.

Three days after my Final Order in the Coordinated Care case was entered, for the first time since he began his position as Chief Deputy six months prior, on September 6, 2013, Mr. Odlorne called me to meet with him privately, one-on-one, behind his closed office doors. At that time Mr. Odlorne told me that he "did not like the outcome of my decision in the Coordinated Care case." He also repeatedly kept trying to talk to me about the primary issue in that case (the very important statewide and nationwide issue of network adequacy), to try to have me explain my reasoning in the CCC case and to argue with me about my decision and tell me how I should have decided it. At the time of that meeting, CCC was still an ongoing case because on that very day (September 6) the OIC had filed a Motion for Reconsideration asking me to reconsider my final decision in that specific case. (I also keep an updated hearing calendar and distribute it regularly to the Chief Deputy, Commissioner, all legal staff and agency heads and others so that it is very clear which specific cases are ongoing, what activities have occurred and what their next scheduled activities are.) Even so, and in violation of RCW 34.05.455, for nearly one hour Mr. Odlorne repeatedly expressed his disapproval of my Final Order in that case even though he well knew it was then still an ongoing case, forced his opinion of my decision and the primary issue involved in it on me, and made me extremely uncomfortable. He also repeatedly attempted to have me discuss the CCC case with him, explain and defend my final decision in that case and tell him about, and argue with him about, the primary issue involved in that case. His behavior was in violation of RCW 34.05.455(3) and he was attempting to have me violate RCW 34.05.455(3). Additionally, during that meeting Mr.

Odlorne stressed that he could not give me a positive work performance evaluation because he did not approve of the outcome of my decision in the CCC case.

During the first private meeting he called with me on September 6, 2014, Mr. Odlorne indicated no interest in complying with the APA rules, and called me to meet with him in private one-on-one meetings, with his office door closed, on 9/17/13 and again on 10/15/2013. During these private one-on-one meetings, Mr. Odlorne told me that I must decide the cases I hear according to the Commissioner's policies and positions. He told me that when I receive Demands for Hearing I should go to the Commissioner and ask him how he wants me to decide each case and that I was obligated to decide the cases the way the Commissioner wants them decided. He advised me that my duty was to know what the Commissioner's preferences as to each case were and to decide them accordingly. When I told him that this was illegal and unethical, and explained the ex parte prohibitions of the APA, and the requirement that I remain impartial and provide due process to all parties, he disagreed but told me that if I was unwilling to go to the Commissioner to ask him how I should decide each case then I should alternatively go to OIC staff members and ask them how the Commissioner stood on the issues in my cases and decide in accordance with the Commissioner's wishes. Finally, I again told him that my unique position in the agency was one which, according to the mission of the OIC and the integrity of the agency as well, assured due process and the right to a fair hearing to the public. I explained that both the Commissioner the entity which was appealing act(s) of the Commissioner had the right to due process and therefore as a presiding officer it is my duty under the APA to consider and make my final decisions on just the evidence and legal argument which is presented at hearing so that the appealing party or parties could know what I had been told by the OIC and be able to address that information, which was their constitutional right to due process and a fair hearing and required under title 34 RCW.

On 10/22/2013, during the time I was still considering the Commissioner's request for reconsideration in the CCC case, I received a Demand for Hearing from Seattle Children's Hospital (SCH) contesting the Commissioner's decision to approve several of these same ACA Exchange health care contracts (which were the Exchange contracts of Coordinated Care Corporation (the same entity as had appealed the Commissioner's decision in the CCC case), Premera Blue Cross and Regence/Bridgespan). This SCH case raised exactly the same sole significant issue (network adequacy) and in fact this SCH case included the same parties as well.

I entered my Order Denying OIC's Request for Reconsideration in the CCC case on November 15, 2013. Mr. Odlorne scheduled a private one-on-one meeting with me on November 19, 2013 which I had to decline due to another work commitment which had arisen. He rescheduled the private meeting for December 3, 2013. During that December 3, 2013 meeting, Mr. Odlorne wanted to talk again about the CCC case and argue with my decision to deny the OIC's request that I reconsider my decision in the CCC case. However, because the sole significant issue in the SCH case was identical to the CCC case (network adequacy), I explained to Mr. Odlorne that I was still prohibited by the APA from discussing the CCC case with him, and also explained to him how any discussions about the CCC case would adversely affect the SCH case because the SCH case revolves around the very same significant issue as the

CCC case had and therefore discussion about the issue in the CCC case was still prohibited by RCW 34.05.455(4). Once again, Mr. Odiorne continue to express his dissatisfaction with the outcome of the CCC case – not only my Final Order but also my Order Denying the OIC's Motion for Reconsideration which I had just entered. He also tried to talk to me about the network adequacy issue repeatedly, seemed to ignore my advice that such conversation was prohibited because by that time I had already commenced the similar SCH case. He clearly instructed me to apprise myself of the Commissioner's preferences and to decide my cases in favor of the Commissioner's positions, and he told me again that his work performance evaluations of me would depend, and be centered on, the outcome of my case decisions and whether or not they supported the Commissioner's positions in those cases. During this meeting, Mr. Odiorne failed to maintain his voice and tenor of his communications with me at a conversational level and I was quite intimidated by his behavior toward me.

Because our private one-on-one meeting on 12/3/2013 was so uncomfortable, on 12/5/2013 I wrote Mr. Odiorne a Memorandum which cited and discussed those sections of the APA which prohibited such ex parte communications as he had since September 2013 had with me, even though I had already cited and discussed them with him from the first time he attempted such ex parte communications on September 6, 2013. Although he is a licensed attorney in both Texas and Washington, at least at the OIC he has never had much if anything to do with adjudicative proceedings and therefore I felt it would help to provide him repeatedly with discussions and citations to the prohibitions on ex parte contacts, prohibitions on including considerations of the outcome of my decisions in his work performance evaluations of me and other conduct which would jeopardize my impartiality as a presiding officer and clearly advised him that his behavior was illegal and unethical. He seemed to understand this during our private meeting on 1/21/2014.

On January 15, 2014, however, the OIC filed a Motion to Dismiss the SCH case, and on January 17, 2014 SCH filed a Motion for Partial Summary Judgment and the Intervenors filed a Motion for Summary Judgment in the SCH case. Three days later, on January 18, 2014, Mr. Odiorne called me to a private one-on-one meeting in his office. At that time, he again tried to talk to me about the SCH case, and about two other ongoing cases as well (Scarborough and Preferred Chiropractic Doctor). Once again, I tried to explain the prohibitions of the APA and clearly told him that what he was doing was both illegal and unethical yet he insisted that I had the responsibility to decide in favor of the Commissioner and my decisions would be taken into account in his work performance evaluation of me.

On February 3, 2014 I heard the parties' arguments on the OIC's Motion to Dismiss the SCH case. On February 18, 2014 Mr. Odiorne scheduled another one-on-one meeting with me and discussed the SCH case even though at that time I was in the very middle of considering my decisions on those three Motions and it was clear to him that SCH was an ongoing case. On 2/20/2014 I entered my Order Denying OIC's Motion to Dismiss the SCH case for reasons stated therein. I also denied Intervenors' Motion for Summary Judgment on that date. By email sent 2/26/2014 Mr. Odiorne expressed his displeasure with my decision in my Order Denying the OIC's Motion to Dismiss the SCH case.

On April 2, 2014 I entered a Final Order in the case of Preferred Chiropractic Doctor (PCD). Although that case was also an ongoing case (the OIC had filed a Motion requesting me to reconsider my decision in that case), during the private meeting which Mr. Odiorne called with me on April 15, 2014 once again he talked to me about this ongoing case. He failed to keep his volume and tone on a conversational level, insinuated that I was somehow incapable because I did not realize that the Commissioner had a high priority in "getting rid of unauthorized insurers" such as he alleged the discount plan company in the PCD was and so I certainly should have upheld the Commissioner's efforts to impose a \$142,000+ fine against that company. The PCD case is still ongoing today. Mr. Odiorne again tried to talk to me about the issue in the SCH case as well even though it is still an ongoing case today. Finally, during that meeting Mr. Odiorne expressed clear displeasure at my decisions (although he has never mentioned the majority of cases in which I in fact uphold the Commissioner's position, just those cases where I have not been able to uphold the Commissioner's position). Mr. Odiorne also clearly let me know that he would evaluate my work performance based upon my decisions, and that indeed my job itself was at stake depending upon the decisions I made in these cases and particularly the SCH case.

As an indication of some of Mr. Odiorne's prohibited ex parte communications about ongoing cases, and undue influences he is putting on me such as threatening my job if I do not decide in favor of the Commissioner in these cases where I am legally required to be impartial, on April 30, 2014 Mr. Odiorne directed me to meet with him on May 1, 2014 to discuss a PDP interim performance evaluation he had drafted (which is optional and I have never had an interim evaluation before) and which he asked me to sign. In this evaluation, he evaluates me on my failure to uphold the Commissioner's positions (and not the opposing parties' positions) in cases he specifically cites in that document which are all ongoing cases as they have been appealed and/or some were interim final decisions in those ongoing cases (SCH, CCC and Scarborough) in which he was displeased with the outcome of my decisions because they did not support the Commissioner's position. He states, for example:

"[Your] orders must as clearly and obviously support Commissioner's policy and program goals as the [sic] support the law. Since your orders are legally the acts of the Commissioner, they must be orders that he supports." [Emphasis added.]

In this evaluation of my work Mr. Odiorne also cites two closed cases (Tam and Hyer) and bases his evaluation of my work solely on the outcome of those decisions strictly because they did not uphold the Commissioner's position (without regard to what evidence and legal arguments might have been presented in those extraordinary cases). I responded to Mr. Odiorne's interim evaluation on May 9, 2014 with nine pages of comments which I trust will be attached to that interim evaluation -- including, often, the fact that I could not comment upon the ongoing cases he criticized (he criticized my decisions in those ongoing cases, but only the decisions in those ongoing cases which did not support the Commissioner's position and not the decisions in those ongoing cases which did support the Commissioner's position). Finally, on May 8, 2014 Mr. Odiorne gave me his draft of "revised PDP expectations" which new expectations clearly

stress his expectation that I enter final orders that conform to "delegated authority, ... and Commissioner policy and program goals applicable to the individual case" and other language indicating his formal expectation that I support the Commissioner's position in my cases (and not the appealing parties' positions).

At this point Mr. Odiorne is clearly threatening my job if I do not enter decisions in these cases which support the Commissioner's position (as opposed to the appealing parties' positions). At this time all three cases he criticized in my Interim Evaluation are still ongoing. The SCH case is, in fact, scheduled for hearing to begin on June 9, 2014 and I believe that Mr. Odiorne is simply trying to coerce me into making decisions in support of the Commissioner's position in SCH (as well as, apparently, all other cases in which an aggrieved party appeals an act of the Commissioner pursuant to RCW 48.04.010) including making a decision in SCH which supports his interpretation of the significant issue therein i.e. the very important issue of network adequacy. Under title 34 RCW, I am required to make decisions in these cases, including the SCH case and all other cases, based upon the evidence and arguments presented by the parties at hearing. In this way the public is protected, and the integrity of the OIC and the Commissioner himself are protected. However, as discussed above, in violation of RCW 34.05.455 and substantial case law, Mr. Odiorne has continued to violate the important prohibitions on ex parte communications in ongoing cases and continues to influence me in other ways including threatening my employment so that my ability to act as an impartial presiding officer is jeopardized. He is also pressuring me to violate RCW 34.05.455 as well. In this way, the integrity of the OIC, the Commissioner, and the hearing process, along with my own integrity and commitment to comply with title 34 RCW and related statutes and regulations are threatened. In addition, the public is harmed because their rights to a fair hearing and final decision from an impartial presiding officer are jeopardized without their even having knowledge that they are being denied these constitutional and statutory rights.

What written evidence have you to support this report?

I have written contemporaneous notes of the private meetings which Mr. Odiorne has called with me; written statements representing prohibited ex parte communications from Mr. Odiorne to me as the presiding officer; written instructions to me to decide the cases which come before me in favor of the Insurance Commissioner; as well as the several written Memoranda that I have written to Mr. Odiorne explaining why I cannot receive ex parte communications from him and why I cannot communicate with him ex parte regarding ongoing cases, as well as explaining the laws and parties' rights to fair hearings and an impartial presiding officer.

Are there any witnesses?

Mr. Greg Devereaux, Executive Director
Washington Federation of State Employees
1212 Jefferson Street SE
Olympia, WA 98501

(360) 352-7603 Because all of the private one-on-one meetings which Mr. Odiorne called with me referenced in my discussion above included just him and me behind his closed office doors there are no witnesses. However, I do have written contemporaneous meeting notes and also the above written communications from the to Mr. Odiorne containing and concerning the prohibited ex parte communications and influences of me as the Presiding Officer. Mr. Devereaux, however, did attempt to come with me to one meeting with Mr. Odiorne to support me, and Mr. Odiorne refused to let him come to the meeting when he appeared at the door to participate. Mr. Devereaux also talked to the Insurance Commissioner about this matter recently and received confirmation of at least some of these activities although I encourage you to talk to Mr. Devereaux himself concerning his conversation(s).

How do you know that this happened?

I am the Chief Presiding Officer for the Office of the Insurance Commissioner and all the events related here are ones which I have experienced personally.

EXHIBIT F



Health > Doctors > Dana Petersen, MD

Dr. Dana M Petersen MD

Pediatrician

Dr. Dana Petersen is a pediatrician in Olympia, Washington. He is affiliated with multiple hospitals in the area, including Providence St. Peter Hospital and Seattle Children's Hospital. He received his medical degree from UC Davis School of Medicine and has been in practice for 34 years. Dr. Petersen accepts several types of health insurance, listed below. He is one of 23 doctors at Providence St. Peter Hospital and one of 343 at Seattle Children's Hospital who specialize in Pediatrics. He also speaks multiple languages, including French.

Are you Dr. Dana Petersen? [Edit Profile](#)

[Doctor Overview](#) | [Contact Information & Map](#)

Specialty & Clinical Interests

Pediatrician: General Pediatrics

Office Location



[See Contact Information](#)

Hospital Affiliation

Seattle Children's Hospital
Providence St. Peter Hospital

Education & Medical Training

University of Washington
Residency, Pediatrics, 1980-1981

University of Washington
Residency, Pediatrics, 1982-1983

UC Davis School of Medicine
Class of 1980

Certifications & Licensure

American Board of Pediatrics
Certified 29 years in Pediatrics

WA State Medical License
Active through 2015

Publications & Presentations

Using community-based participatory research to shape policy and prevent lead exposure among Native American children.

Petersen, D. M., Minkler, M., Vásquez, V. B., Kegler, M. C., Malcoe, L. H., Whitcrow, S.

Multi-dimensional quality of life among long-term (5+ years) adult cancer survivors.

Bloom, J. R., Petersen, D. M., Kang, S. H.

Insurances Accepted

Aetna Choice POS II
BCBS Blue Card PPO
CIGNA HMO
CIGNA Open Access
CIGNA PPO
First Choice
Great West PPO
Health Net Oregon PPO

Mutiplan PHCS PPO
ODS Network
Premera BCBS Heritage & Heritage Plus 1
Providence Health System Personal Option
Regence Washington - Preferred Provider Network
United Healthcare - Direct Choice Plus POS
United Healthcare - Direct Options PPO

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EXHIBIT G



OFFICE OF
INSURANCE COMMISSIONER

March 21, 2014

Judge Patricia Petersen
Chief Hearings Officer
Office of the Insurance Commissioner
P. O. Box 40255
Olympia WA 98504-0255

In Re SCH v. OIC, OIC No. 13-0293

Dear Judge Petersen:

It has recently been reported to me that your husband, Dr. Dana Petersen, has some professional interaction with Seattle Children's Hospital (SCH). Based on my subsequent fact checking, I have concluded that Dr. Petersen's economic interests in SCH are de minimis, and would not be substantially affected by the current proceeding between the OIC and SCH. Furthermore, I have no reason to believe that his interactions have impacted or impeded your ability to be impartial. However, in the interests of protecting the integrity of the Commissioner's hearings process, I am obligated to inform you of the facts I considered and share with you the provisions of the Administrative Procedures Act (APA) and the Code of Judicial Conduct (CJC) which I reviewed in coming to this conclusion. And because ex parte contact between us is prohibited, I have copied all parties to the case on this letter.

As you know, the CJC is not directly applicable to administrative hearings officers. However, the APA effectively incorporates the CJC by reference, providing that an administrative hearings officer can be disqualified for any reason that is grounds for the disqualification of a judge. RCW 34.05.425(3). A hearings officer "shall not permit family, social, political, financial, or other interest or relationships to influence the judge's judicial conduct or judgment." CJC Rule 2.4(B). A hearings officer should disqualify herself if her "impartiality might reasonably be questioned." CJC 2.11(A). This specifically applies in circumstances where either the hearings officer or her spouse is "a person who has more than a de minimis interest that could be substantially affected by the proceeding." CJC 2.11(A)(2)(c), or when the hearings officer knows that her "spouse . . . has an economic interest in the subject matter in controversy or in a party to the proceeding."

Judge Patricia Petersen
March 21, 2014
Page 2

Your husband, Dr. Dana Petersen, is a very well-respected pediatrician in the Olympia area. I am personally acquainted with Dr. Petersen; for the last two years, he and I have served on the executive board of Behavioral Health Resources, a non-profit multi-county provider of mental health and addiction recovery services.

It was recently reported to me that Dr. Petersen conducted his residency at SCH, and that he refers patients to them in the course of his pediatric practice. On the website for his clinic (Olympia Pediatrics, PLLC), Dr. Petersen's biography confirms his residency. He also lists a hospital affiliation with SCH, so it appears that Dr. Petersen refers patients for care at SCH. I conducted a search of the SCH online provider directory (<http://www.seattlechildrens.org/doctor-finder/>) and he is not listed as having admitting or attending privileges.

Based on these facts, Dr. Petersen's interest in SCH appears to be de minimis. I have no evidence that Dr. Petersen is compensated for referrals, or that he has other financial or economic interests in SCH that could be substantially affected by the outcome of this current case. It does not appear that Dr. Petersen's professional contacts with SCH constitute a family interest that would influence your opinion, nor do I perceive any appearance of bias in your conduct or judgment.

Thank you for your review of this letter. If I am mistaken in any of the facts I have related, I would appreciate your clarification.

Sincerely,



AnnaLisa Gellermann
Deputy Insurance Commissioner
Legal Affairs

cc: Michael Madden, Attorney for Seattle Children's Hospital
Gwendolyn C. Payton, Attorney for Premera Blue Cross
Timothy J. Parker, Attorney for Bridgespan Health Company
Maren R. Norton, Attorney for Coordinated Care Corporation
Charles Brown, OIC Staff Attorney

EXHIBIT H

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone (360) 725-7000
www.insurance.wa.gov

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OFFICE OF
INSURANCE COMMISSIONER

2014 MAR 26 P 1:27

OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

March 26, 2014

AnnaLisa Gellermann, Esq.
Deputy Commissioner, Legal Affairs Division
Office of Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

SUBJECT: Seattle Children's Hospital, Docket No. 13-0293

Dear Ms. Gellermann:

This is in response to your letter dated March 21, 2014 in the above referenced matter. I appreciate the time you devoted to your fact finding, the personal information you shared with me, and your careful efforts in reaching your conclusions. Under Title 48 RCW, WAC 284 and Title 34 RCW, it is my obligation to protect the integrity of the OIC's hearing process. Title 34 RCW requires strict separation of functions between your office as the prosecutor and my office as the adjudicator, and Title 48 RCW and regulations further that goal. As is well established in case law interpreting Title 34 RCW, this strict separation of functions is critical to ensure that the OIC's hearing process - from notification of rights to appeal, to receipt of the Demand for Hearing and determination of the right to hearing, and throughout the adjudicative process - provides required due process and results in decisions that are fair to both the aggrieved parties and the OIC.

Second, as the presiding officer in this instant case it was my legal obligation under Title 34 RCW and the CJs, before commencing this case, to evaluate whether there are any interests, relationships or other facts which might tend to influence my impartiality. It is also my continuing obligation, throughout this case, to evaluate whether there are any interests, relationships or other facts which might tend to influence my impartiality. If I knew of any such facts prior to the commencement of this case, then I was obligated to have recused myself. Just as always, I certainly addressed this question long before I commenced this case, and I concluded that there are no relationships, interests or facts of any kind which might affect my ability to conduct this proceeding in a fair and impartial manner.

Third, pursuant to RCW 34.05.425 any party to an adjudicative proceeding such as this one may petition for disqualification of a presiding officer after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification. Upon receipt of such a motion, the presiding officer is obligated to carefully



Letter to Ms. Gellermann
March 26, 2014
Page Two

consider the facts alleged and determine whether to grant the petition, stating facts and reasons for the determination; that determination is appealable to the superior court. To my knowledge no party has filed a petition for disqualification alleging any such facts in this case.

In your letter you do not request a response, however I trust the above information will be helpful. Finally, while a party to a proceeding normally only communicates the facts he has found and conclusions he argues to opposing counsel and the presiding officer if and when that party files a petition for disqualification (and not just for general informational purposes as is apparently the situation here), and while the presiding officer is not required to respond unless a petition for disqualification is filed, I do confirm that the facts you have disclosed in your letter are correct.

Once again, I appreciate the time you devoted to your fact finding and choosing to share this information with me and opposing counsel, and please recognize that my strict compliance with my legal obligations described above along with the agency's careful observance of required separation of functions within this agency provide required due process and result in decisions in OIC hearings that are fair to both the aggrieved parties and the OIC; that specifically with regard to this case my legal obligations described above have been strictly adhered to; and that any party has the right to question a presiding officer's impartiality at any time by filing a petition for disqualification.

Sincerely,



Patricia D. Petersen, J.D.
Chief Presiding Officer

cc: Michael Madden, Esq. (*via electronic mail*)
Gwendolyn C. Payton, Esq. (*via electronic mail*)
Timothy J. Parker, Esq. (*via electronic mail*)
Maren R. Norton, Esq. (*via electronic mail*)
Charles Brown, Esq. (*via electronic mail*)