

**FILED**

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HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

**STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

**KAISER FOUNDATION HEALTH  
PLAN OF THE NORTHWEST,**

Respondent.

Docket No. 15-0205  
OIC # 702  
NAIC# 95540

OIC'S REPLY IN MOTION IN  
LIMINE TO CLARIFY ISSUES  
FOR HEARING

Kaiser violated the Insurance Code. There are no remaining issues of law that can be heard and no facts in dispute in this matter. The definition of service area and even whether Kaiser can or cannot provide adequate access to medical services for its enrollees outside of Clark or Cowlitz County is irrelevant to Kaiser's violations. Kaiser does not dispute that it is in violation of the Insurance Code; admitting that as many as 570 enrollees who neither live nor work in its approved service area were offered health care coverage through approximately 79 health plans which are still being offered to those enrollees. *See* Kaiser's Reply in Motion to Stay. Kaiser has failed to timely raise its legal challenges to the OIC's determination. Kaiser's Demand for Hearing should be now dismissed as a matter of law because the only justiciable issue, whether or not to stay the Cease and Desist Order, over which the OIC had jurisdiction has now been determined by the Presiding Officer. Kaiser now only presents non-justiciable issues over which there is no jurisdiction.

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3 **I. INTRODUCTION**

4 Kaiser filed an Access Plan in 2014 as required by WAC 284-43-220. Kaiser's  
5 Access Plan provided detailed information and geographic network maps to prove to the  
6 OIC that Kaiser had network adequacy for Clark and Cowlitz counties. Kaiser's Access  
7 Plan stated that its service area consisted solely of Clark and Cowlitz counties and  
8 sought approval to offer health plans in this service area. Kaiser's Access Plan was  
9 approved by the OIC, enabling Kaiser to sell its health plan contracts in its approved  
10 service area of Clark and Cowlitz counties. Kaiser sold health plan contracts which  
11 stated that its service area was certain geographic areas by zip code in the Northwest.  
12 Kaiser's health plan contracts did not state that its service area was Clark and Cowlitz  
13 counties. As a result of Kaiser's failure to lawfully describe its service area in its  
14 contracts, employers who purchased these health plans provided them to employees who  
15 were not in Kaiser's service area of Clark and Cowlitz counties. Kaiser now admits that  
16 as many as 570 enrollees who did not live or work in Kaiser's service area were  
17 provided Kaiser's health plans. Kaiser violated its Access Plan and the Network Access  
18 regulations of the Insurance Code. Kaiser also violates its own health plan contract  
19 filings as Kaiser has already corrected its health plan contracts to reflect its approved  
20 service area and to match the definition of WAC 284-43-130(29) and the OIC has  
21 approved the corrections.

22 Kaiser was advised of its violation on April 1, 2015 and ordered to correct the  
23 violation. Kaiser's health plan contract filings were suspended to provide Kaiser an  
24 opportunity to correct these violations before the OIC disapproved the health plan  
25 contract filings. Kaiser initially responded that it believed that the OIC's interpretation  
26 of service area should not include large group plans like Kaiser. However, Kaiser then  
withdrew its objection and revised its health plan contracts to defined its service area as  
Clark and Cowlitz counties. Kaiser did not request a hearing on the OIC's determination.

1 Kaiser withdrew its challenge of the OIC's determination and issued amended  
2 Certificates of Coverage to its enrollees. Had Kaiser not revised its health plan contracts,  
3 the OIC would have had to disapprove the filings.

4 The OIC then discovered that Kaiser continued to offer its health plans to  
5 enrollees outside of its service area and that it had renewed the Bonneville health plan  
6 whose enrollees were located primarily outside of its service area. The OIC issued a  
7 Cease and Desist Order as a preventive tool to enforce the prior determination that  
8 Kaiser already consented to. If Kaiser were permitted to continue to offer its health plan  
9 to enrollees who did not live or work in Clark or Cowlitz counties, Kaiser would be  
10 violating the network access regulations, Kaiser's Access Plan and violating its filed  
11 health plan contracts. Any of Kaiser's arguments are now nullified by its consent to the  
12 OIC's prior determination and Kaiser's subsequent changes to its health plan contracts  
13 in compliance with the order.

## 14 II. AUTHORITY AND ARGUMENT

15  
16 The OIC filed a motion entitled Motion in Limine instead of filing a motion for  
17 summary judgment. At that time, given that there was still an outstanding issue to be  
18 decided by the Presiding Officer (whether or not to grant the stay), the Presiding Officer  
19 could not rule on a motion for summary judgment, if filed by the OIC. A motion in  
20 limine is appropriate to resolve issues prior to hearing and operates similar to a motion  
21 for summary judgment. *See Nivens v. 7-11 Hoagy's Corner*, 133 Wash. 2d 192, 943  
22 P.2d 286 (1997). Kaiser's Response provides that the OIC is not entitled to relief  
23 because the OIC's motion is entitled "motion in limine," which Kaiser argues should be  
24 restricted to resolving evidentiary issues. However, the title given to a pleading is  
25 immaterial. *Smith v. Driscoll*, 94 Wash. 441, 162 P. 572; *Lawrence v. Halverson*, 41  
26 Wash. 534, 83 P. 889; *Casey v. Oakes*, 17 Wash. 409, 50 P. 53. The character of the

1 pleading will not be measured by the style or title affected by the pleader, but rather by  
2 reference to its substance. *Johnson v. Pacific Bank & Store Fixture Co.* 59 Wash. 58, 60;  
3 109 P. 205, 206; 1910 Wash. LEXIS 1134. OIC's Motion in Limine to Clarify Issues for  
4 Hearing is clear in its intent that a lack of jurisdiction bars all of Kaiser's arguments  
5 from being heard except whether or not the Cease and Desist Order should be stayed.  
6 Furthermore, Kaiser already raised these exact same arguments when it challenged  
7 OIC's determination in April 2015, Kaiser is precluded now from reasserting these  
8 challenges.

9 A disposition within SERFF is a final order and must be appealed within ninety  
10 (90) days. *See* OIC Order #14-0187.<sup>1</sup> SERFF has three dispositions: approval,  
11 disapproval and suspension. If orders in SERFF were not final orders, then issuers would  
12 not be able to challenge suspension or disapproval of rate or form filings. Orders in SERFF  
13 are final orders allowing the aggrieved party to appeal the OIC's determination. The  
14 Office of the Insurance Commissioner may hold a hearing for any purpose within the  
15 scope of the code when a person (which includes an issuer) is aggrieved by any act or  
16 order of the OIC. RCW 48.04.010(b). Aggrieved parties must file a request for hearing  
17 within ninety (90) days. RCW 48.04.010(3). Unless hearing is demanded within ninety  
18 (90) days, the right to such hearing shall conclusively be deemed to have been waived.  
19 RCW 48.04.010(3).

20 Form filings and rate filings are approved, disapproved or suspended to provide  
21 issuers an opportunity to correct the filings prior to denial by the OIC. If a form or rate  
22 filing is not corrected or the carrier does not respond as required by the OIC, the form or  
23 rate filing is denied. To avoid denying a rate or form filing which requires the insurer to  
24 resubmit its filing, the OIC sometimes places the filing in active suspense, and

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25 <sup>1</sup> [http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-  
26 proceedings/documents/14-0187-order-summary-judgment.pdf](http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/documents/14-0187-order-summary-judgment.pdf)

1 depending upon the actions taken by the issuer, the OIC will then approve or deny the  
2 filing.

3 On April 1, 2015, the OIC sent Kaiser an objection and notice of suspension,  
4 informing Kaiser that it was not permitted to define service areas by zip code, that it  
5 must correct the health plan contracts that erroneously stated this as an option, and that  
6 the plans were suspended until corrections were made.

7 As described by Ms. Kreitler, Kaiser fully understood that it had many options in  
8 response to that decision. Kaiser could have elected to file a new health plan with  
9 expanded counties. Kaiser could have filed a request to use zip codes, showing good  
10 cause why they should be able to do so.

11 The SERFF order was a final order which had the effect of requiring Kaiser to  
12 immediately terminate all enrollees outside of its service area because Kaiser was  
13 violating the law in allowing its health plans to be offered to these enrollees. Kaiser  
14 could have timely requested a hearing pursuant RCW 48.04.010(3) any time before June  
15 30, 2015. Instead, Kaiser changed its health plan contracts to clarify that its service area  
16 is Clark and Cowlitz counties, accurately reflecting the law and its approved Access  
17 Plan. The OIC has even approved the corrections submitted by Kaiser. Months have  
18 passed since the OIC's determination on Kaiser's health plan contract filings, and the  
19 timeframe for requesting a hearing on OIC's determination regarding Kaiser's service  
20 area ended on June 30, 2015.

21 The Cease and Desist Order issued by the OIC simply enjoins the unlawful sale  
22 of plans outside of Kaiser's service area that it selected and filed with the OIC. There are  
23 no facts in controversy in this matter. Kaiser admits that it has offered health plans  
24 outside of its approved Access Plan's service area in violation of the Insurance Code.  
25 Kaiser did not timely request a hearing on the OIC's determination of these violations,  
26 therefore this tribunal has no jurisdiction to hear any other issues in this matter, except  
whether or not the Cease and Desist Order should be stayed, which has now been

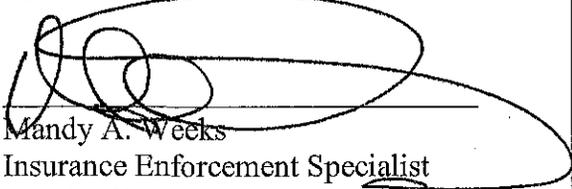
1 determined by the Presiding Officer. As a result, an order dismissing Kaiser's Demand  
2 for Hearing or an order limiting the action to a determination of stay, which would have  
3 the effect of a dismissal now that the stay has been determined, should be entered.  
4

5 **V. CONCLUSION**  
6

7 For the foregoing reasons, the OIC respectfully requests that the Chief Presiding  
8 Officer enter an order limiting the issues in this hearing to whether or not the stay should  
9 be granted and dismiss the Demand for Hearing because the decision on the Kaiser's  
10 Motion to Stay has been issued.

11 DATED this 20th day of November, 2015.  
12

13 MIKE KREIDLER  
14 Insurance Commissioner  
15 By and through his designee

16   
17 Mandy A. Weeks  
18 Insurance Enforcement Specialist  
19 Legal Affairs Division  
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CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

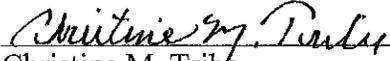
On the date given below I caused to be served the foregoing OIC'S REPLY IN MOTION IN LIMINE TO CLARIFY ISSUES FOR HEARING on the following individuals in the manner indicated:

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**SIGNED** this 20<sup>th</sup> day of November, 2015, at Tumwater, Washington.

  
Christine M. Tribe