MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT
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DECLARATION OF MAILING
I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to Mr. Gingold + Mr. Brown
DATED this 11th day of July 2007 at Tumwater, Washington.
Signed: Wendy Galloway

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Paralegal
(360) 725-7002
wendyg@oic.wa.gov

July 11, 2007

Jeffrey L. Gingold, Esquire
Lane Powell PC
1420 Fifth Avenue, Suite 4100
Seattle, Washington 98101-2338

Charles D. Brown, Sr. Staff Attorney Legal Affairs
Washington Office of Insurance Commissioner
5000 Capital Boulevard
Tumwater, Washington 98501

Re: United HealthCare Insurance Company Request for Hearing

Dear Messrs. Gingold and Brown:

This letter is in follow up to my letter to you dated May 11, 2007. In that letter I referenced the Commissioner's letter dated May 7 and advised you that, pursuant to the specific statutory requirements of RCW 48.04.010(1), in order to file an appeal which constitutes a proper appeal, the Insurance Commissioner may not file the appeal on behalf of United HealthCare: rather, United HealthCare must file the appeal itself, specify how it is aggrieved and set forth the bases upon which it forms its appeal. Further, I advised that, as is always the procedure, a proper request for hearing must include the act of the Commissioner being appealed. *[A]s always, we must have a copy of the written action itself: it is only then that we can determine whether the entity is in fact aggrieved by this act and therefore entitled to a hearing, and can adjudicate the merits of the case... Should United HealthCare wish to have its right to hearing considered, it must comply with the above statutory requirements, and only then may the appeal be referred to the Office of Administrative Hearings for an initial decision.*

As indicated above, in order to appeal an action of the Commissioner, the appellant must furnish a copy of the action of the Commissioner. This is necessary in order to ascertain whether the appellant has a right to hearing under RCW 48.04.010, i.e., whether this is an act or threatened act of the Commissioner, whether the appellant is aggrieved, and whether the request for hearing is filed timely, in order to determine whether or not there is a case to be adjudicated at all. Additionally, of course, it is necessary to have a copy of the act or threatened act of the Commissioner in order to be able to adjudicate the merits of the case.

In response to my May 11 letter, on June 12, 2007, United HealthCare did file its request for hearing, but still did not submit a copy of the Commissioner's action although it refers to this action as a "proposed consent order". Please be advised that the Proposed Consent Order is a very common form of action by the Commissioner and usually includes a statement of facts to which the entity is asked to agree and often an agreement to pay a fine for its activities, and/or other disciplinary measures. Such a Proposed Consent Order clearly constitutes an act or threatened act of the Commissioner as required by RCW 48.04.010(1), and it is normally accompanied by a communication from the Commissioner requesting that it be signed or further action will be taken. The fact that a Proposed Consent Order is not currently signed does not disqualify it from being an appealable action as it is still, under the provisions of RCW 48.04.010(1) an "act or threatened act of the Commissioner" and – as is always the case in every such situation - the recipient who wishes to appeal this act or threatened act has a copy of this Proposed Consent Order and any related communication from the Commissioner filed herein so its right to hearing can be determined as described above.

United HealthCare has not furnished the Proposed Consent Order or any accompanying letter(s) from the Commissioner related to the Proposed Consent Order. While United HealthCare may have expected the Commissioner to furnish a copy of this Proposed Consent Order to the undersigned, this has not been done and United HealthCare is advised that it is United HealthCare's primary responsibility as it is United HealthCare which is appealing this action.

A prehearing conference is scheduled to include both parties **on July 16, 2007, at 10:00 a.m..** The sole purpose of this prehearing conference is to inquire of the parties why a copy of the Commissioner's Proposed Consent Order and accompanying letter(s), if any, have not been furnished. If copies of these actions of the Commissioner are not filed forthwith then it is assumed that there are no actions of the Commissioner therefore United HealthCare is not aggrieved, and therefore there is no case to be adjudicated. In this situation, the matter cannot be transferred to the Office of Administrative Hearings for an initial decision as there is no case to be adjudicated, and the matter will be dismissed with prejudice.

If there is a concern on the part of United HealthCare that the action against it be kept from the public record, please note that adjudicative hearing files are public unless a Motion for a Protective Order is made and granted, based upon specific statutory criteria.

The act of the Commissioner must be filed, so that, as above, a determination as to right to hearing and other factors may be determined, and then a Motion for Protective Order may be made. It is not acceptable to simply not file a copy of the act of the Commissioner, for the above reasons. Alternatively, if the only issue is the proper interpretation of RCW 48.66.045 (and not the fine or any other disciplinary action being imposed against United HealthCare, as alluded to in its June 12 request for hearing), United HealthCare could file a Request for Declaratory Ruling and proceed from there depending upon the outcome of that declaratory ruling.

I trust that the above information is helpful to United HealthCare in filing its request for hearing. I anticipate that during prehearing conference on July 16 either 1) a copy of the act of the Commissioner with any accompanying letter(s) from the Commissioner will be furnished so that this matter can be properly reviewed and transferred to the Office of Administrative Proceedings if the criteria of RCW 48.04 are met; or 2) the case will be dismissed because United HealthCare has been unable to show that it has been aggrieved as required by RCW 48.04. I expect that these issues will be determined during prehearing conference and for that reason ask that the parties be prepared to respond as necessary during this prehearing conference.

Sincerely,

Patricia D. Petersen
Presiding Officer