

STATE OF WASHINGTON

Phone: (360) 725-7000

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER



OFFICE OF  
INSURANCE COMMISSIONER

FILED

SEP 10 2007

Hearings Unit, OIC  
Patricia D. Petersen  
Chief Hearing Officer

**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 parties listed below.  
DATED this 11th day of Sept. 2007 at Tumwater, Washington.

Signed: Wendy Galloway

HEARINGS UNIT  
Fax: (360) 664-2782

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

Wendy Galloway  
Paralegal  
(360) 725-7002  
[Wendyg@oic.wa.gov](mailto:Wendyg@oic.wa.gov)

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of: )  
)  
**LIFEWISE HEALTH PLAN OF ARIZONA,**)  
)  
An Authorized Insurer, )  
\_\_\_\_\_ )

**Docket No. D07-0292**

**ORDER ON STATUS  
OF HEARING**

**TO:** Clifford W. Klima, President  
LifeWise Health Plan of Arizona  
Post Office Box 327  
Seattle, Washington 98111-0327

Barbara Allan Shickich, Esquire  
Riddell Williams P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154-1192

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Michael G. Watson, Chief Deputy Insurance Commissioner  
James T. Odiorne, Deputy Commissioner, Company Supervision Div.  
Carol Sureau, Deputy Commissioner, Legal Affairs Division  
Andrea Philhower, Staff Attorney, Legal Affairs Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On September 5, 2007, the undersigned held a prehearing conference in this matter, which included all parties. LifeWise Health Plan of Arizona, a Washington domestic health insurer,



**ORDER ON STATUS OF HEARING**

Docket No. D07-0292 - Page 2

was represented by Barbara A. Shickich, Esq. of Seattle. The Insurance Commissioner appeared pro se, by and through Andrea Philhower, Staff Attorney in his Legal Affairs Division.

The purpose of said prehearing conference was to determine whether there were still outstanding issues in this matter upon which LifeWise would continue its appeal or if the issues were now moot. During said prehearing conference, LifeWise advised that, as indicated in its Demand for Hearing filed August 17, 2007, it is not appealing the Commissioner's Order to Cease Acceptance and Writing of New Business, and to Respond Fully to Inquiries entered on August 15, 2007, for the reason that the Commissioner has rescinded the first portion of said Order which prohibited LifeWise from accepting, selling, writing, issuing, or otherwise effectuating any new policies of insurance, and LifeWise has agreed to comply with the second portion of said Order concerning compliance with previous orders of the Commissioner entered on June 27 and 28, 2007. Rather, LifeWise advised that, as indicated in its Demand for Hearing filed August 17, 2007, it is appealing statements not included in any Order of the Commissioner, but wording included in an August 15, 2007, News Release from the Commissioner which it believes constitute a threatened act of the Commissioner.

Specifically, LifeWise's appeal is based upon wording in an OIC News Release dated August 15, 2007, which purports to summarize the aforereferenced August 15, 2007 Order, but which is titled *Kreidler orders Premera to stop subsidizing Arizona health plan at expense of Washington policyholders* and goes on to quote the Commissioner as follows: *At the end of this year, Washington policyholders will have spent \$49 million footing the bill of Premera's investment in Arizona.... I find Premera's behavior deeply troubling, ... Premera shouldn't be allowed to subsidize a for-profit health plan in Arizona at the expense of Washington policyholders.*

As agreed during the prehearing conference, the Commissioner's representative would ascertain whether the Commissioner's position is that Premera's ongoing capitalization of LifeWise requires prior approval from the Commissioner, and, in her letter dated September 5, 2007, she advises that the *OIC does not now, and has never taken the position that OIC has general prior approval authority over capital transfers between companies. Specifically, OIC has not and does not take the position that it has prior approval authority over the capital transfers which have occurred thus far from Premera to LifeWise. To the extent Premera and LifeWise understood the Insurance Commissioner's statements in OIC's August 15, 2007 press release to indicate otherwise, the companies have misinterpreted those statements. Having said that, OIC reserves its rights under the Insurance Holding Company Act ... and the Health Carrier Holding Company Act .... [but that] OIC's position with respect to the Holding Company Acts does not, however, justify a hearing at this time because OIC has made no determination that either Company is in violation of the Acts, nor has OIC threatened action in this regard....*

Even so, LifeWise, by letter dated September 7, 2007, argues that the language of the subject News Release, not of any other letters or orders of the Commissioner, constitute a threatened act, arguing that *The content of the News Release confirms the threatened action and the September 5 letter with its limited and qualified response does not remove the threat.... If, as the letter indicates, the OIC does not desire to have a hearing on these issues at this time, Premera and LifeWise are prepared to agree to an indefinite suspension of referring the matter to the OAH ....*

**ORDER ON STATUS OF HEARING**

Docket No. D07-0292 - Page 3

RCW 48.04.010 provides a right to hearing on request of an aggrieved party in the event of the occurrence of a threatened act of the Commissioner. If an act constitutes a threatened act of the Commissioner at this time, then the aggrieved party has a right to hearing at this time. If an act does not constitute a threatened act of the Commissioner, then no right to hearing exists and the matter should be terminated. If in the future an act or threatened act of the Commissioner occurs, then LifeWise will have the right to file a Demand for Hearing at that time with all of the rights provided for under RCW 48.04.010. It would be inappropriate to enter an indefinite suspension of a matter in which there is no threatened act and therefore no right to hearing exists.

The undersigned will conduct a second prehearing conference in this matter to ascertain from the parties whether there are additional facts or arguments, not apparent in the hearing file to date, which might lead to a conclusion that there is at this time a threatened act of the Commissioner against LifeWise and which therefore LifeWise may continue this instant appeal.

This being the activity of the parties,

**IT IS HEREBY ORDERED** that the undersigned shall conduct a second prehearing conference in this matter to determine whether there are additional facts or argument which might lead to a conclusion that there is at this time a threatened act of the Commissioner, as required by RCW 48.04.010, against LifeWise upon which LifeWise may appeal. If such is not the case, then this proceeding shall be terminated, and, if and when there occurs an act or threatened act of the Commissioner in the future then LifeWise shall have the right to file a new appeal and shall have all rights inherent in such appeal as set forth in RCW 48.04.010.

The parties shall be contacted shortly by Wendy Galloway, Paralegal to the undersigned, to schedule the abovereferenced second prehearing conference.

**ENTERED** at Tumwater, Washington, this 10<sup>th</sup> day of September, 2007, pursuant to Title 48 RCW, and specifically RCW 48.04 and 48.31B.015, Title 34 RCW, and regulations applicable thereto.



**PATRICIA D. PETERSEN**

Chief Hearing Officer