

OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF GEORGIA

IN THE MATTER OF:)
)
NORTHEAST GEORGIA CANCER) CASE NUMBER
CARE, LLC & PETROS)
NIKOLINAKOS, M.D.)
)
v.)
)
BLUE CROSS AND BLUE SHIELD)
OF GEORGIA, INC. AND BLUE)
CROSS BLUE SHIELD HEALTHCARE)
PLAN OF GEORGIA, INC.)
_____)

NOTICE OF PUBLIC HEARING

This Notice of Public Hearing ("Notice") is given, pursuant to O.C.G.A. §§ 33-2-19 and 33-20-30, concerning certain legal issues raised in the above captioned dispute between Northeast Georgia Cancer Carr, LLC ("NEGACC"), a healthcare provider, and Blue Cross and Blue Shield of Georgia, Inc. ("BCBSGA") and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. ("BCBSHP"), a health care corporation and a health maintenance organization respectively (sometimes collectively referred to as "Parties"). The legal issues will be considered during the hearing are as follows, to wit:

Whether O.C.G.A. § 33-20-16 applies to HMO entities; and

All additional legal issues identified, enumerated, and briefed by the Parties.

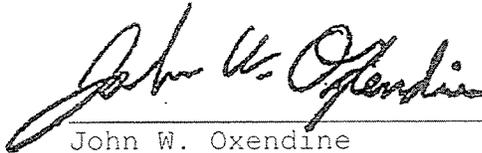
The Commissioner of Insurance for the State of Georgia ("Commissioner") has issued a procedural order in conjunction with this Notice. The Procedural Order is attached herewith. The Parties are directed to follow the procedures set forth in the Procedural Order in this matter. In addition, interested non-parties are directed to follow the procedures set forth in the Procedural Order.

The public hearing on the legal issues in this matter will be held before the Commissioner, beginning at 10:30 A.M. on [insert], and continuing from time to time thereafter until this matter is finally concluded. The hearing will be held in the Hearing Room, 7th Floor, West Tower, Floyd Building, 2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334.

[The Commissioner shall provide public notice of the hearing in this matter in the Fulton County Daily Report for five (5) consecutive days at least ten (10) days prior to the date of the Public Hearing in this matter.]

After the conclusion of the public hearing on the legal issues in this matter, the Commissioner will issue an Order ruling on the legal issues. Subsequent to the Commissioner's legal ruling, and in accordance with the Commissioner's Procedural Order in this matter, the Commissioner will order a subsequent public hearing on the facts in this dispute and shall cause another Notice of Public Hearing to be issued.

This 17th day of December, 2009.

A handwritten signature in cursive script, reading "John W. Oxendine". The signature is written in black ink and is positioned above a horizontal line.

John W. Oxendine
Insurance and Safety Fire Commissioner
State of Georgia

Direct all Correspondence to:

Fred Meyer, Esq.
Administrative Procedure Attorney
Suite 708, West Tower
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334
Email: fmeyer@oci.ga.gov

OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF GEORGIA

IN THE MATTER OF:)
)
NORTHEAST GEORGIA CANCER) CASE NUMBER 11001573
CARE, LLC & PETROS)
NIKOLINAKOS, M.D.)
)
v.)
)
BLUE CROSS AND BLUE SHIELD)
OF GEORGIA, INC. AND BLUE)
CROSS BLUE SHIELD HEALTHCARE)
PLAN OF GEORGIA, INC.)
)
_____)

PROCEDURAL ORDER

The instant dispute was originally filed in my office (Georgia Department of Insurance, "DOI" hereafter) on October 28, 2009. Subsequently, on December 4, 2009, an additional dispute was filed which alleged additional facts and joined an additional party, but which involved substantially the same facts and legal issues. To expedite resolution of the disputes I have consolidated both disputes into one case. This above captioned matter involves a dispute between Northeast Georgia Cancer Care, LLC ("NEGACC"), a healthcare provider group, and Petros Nikolinakos, M.D., a provider, and Blue and Cross Blue Shield of Georgia ("BCBSGA") and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. ("BCBSHP"), a health care

corporation and a health maintenance organization, respectively.
(sometimes collectively referred to as "parties").

CONSIDERATIONS OF COMMISSIONER

I. Bifurcation of Legal and Factual Issues

The issue at the heart of the matter before me is a legal one. In order to reach the factual issues of this matter, I must first resolve the proper interpretation of O.C.G.A. § 33-20-16. In this matter, the legal issue is as follows:

Whether O.C.G.A. § 33-20-16 applies to HMO entities.

This is a legal issue of first impression. Moreover, it is a legal issue of great importance to health care delivery community, provider and insurer alike. Because of the novelty and importance of this legal issue, it is appropriate to bifurcate the legal and factual issues.

II. Participation of Non-Parties

The legal issue which is to be decided in this matter is of great importance to the healthcare community. Given this fact, it is important to provide a way for the community at large to weigh in on the appropriate interpretation of O.C.G.A. § 33-20-16. For the sake of efficiency, it is necessary to organize the manner in which non-parties can participate in the legal portion of this dispute.

III. Due Process to Parties

Ultimately, this procedural order is intended to provide the parties and non-parties with due process. To achieve that end, I have decided to specify certain procedures so that all matters are adequately briefed and argued, and so that this whole process can be concluded timely and efficiently.

ORDER OF COMMISSIONER

For the foregoing reasons, **IT IS ORDERED** that the procedure set forth below shall govern the captioned matter, to wit:

§ 1 - Requirement for Participation of Non-Parties

In order to participate, all non-parties must complete and deliver the non-party participant form, attached herewith as Exhibit 1, to Fred Meyer, administrative procedure attorney, at the address provided below on or before January 13, 2010.

§ 2 - Legal Issues to be Briefed

(a) The legal issues which are to be briefed are:

Whether O.C.G.A. § 33-20-16 applies to HMO entities.

(b) Party Briefs

The parties shall be allowed to submit a brief on the legal issues and a response brief. The initial brief of the parties will be served by mail and email to one another and will be delivered and emailed to Fred Meyer at the address provided below on or before January 28, 2010. The response briefs will

be served and delivered in the same manner on or before February 12, 2010.

(c) Non-Party Briefs

Non-parties will be allowed to submit a brief on the legal issues. Non-party briefs are limited to 15 pages. All text shall be 12 point font and double spaced with a minimum of 1 inch margins. Non-party briefs shall be served on the parties by mail and email and be delivered and emailed to Fred Meyer, administrative procedure attorney, at the address provided below on or before January 28, 2010.

(d) Additional Legal Issues Identified by the Parties

The Parties are instructed to identify, separately enumerate, and provide a legal brief for any additional legal matters which require interpretation by the Commissioner, if any. Matters relating to the application of the particular facts of this dispute to the law will be briefed in a subsequent hearing on the facts.

§ 3 - Oral Argument

(a) Party Argument

At the hearing on the legal issues in this matter the Parties will not be time limited. The Parties will, however, be limited to presenting legal arguments on the legal issues.

(b) Non-party Argument

Non-parties will be allowed up to 15 minutes to make legal arguments. Non-parties are encouraged consolidate their arguments and choose one representative where possible so as to ensure an efficient oral argument process. All persons who will present an oral argument are required to submit an oral argument time request, attached herewith as Exhibit 2, to Fred Meyer, administrative procedure attorney, at the address provided below on or before January 28, 2010. The Commissioner may allow persons more time at his discretion.

§ 4 - Ruling of the Commissioner

The ruling of the Commissioner will enumerate and answer each legal issue. The Commissioner will issue the ruling within 30 days of the last hearing and argument on the legal matters of this dispute. The Commissioner may extend this period by written notice to the parties.

§ 5 - Hearing on the Facts

(a) In General

Within 30 days of the Commissioner's ruling on the legal matters of this dispute, the Commissioner shall order that a hearing on the facts be held before him or his designee. The Commissioner may extend this period by written notice to the parties.

(b) Appeal of Legal Decisions

If the ruling of the Commissioner is appealed by any of the parties, then the factual hearing shall be stayed until 30 days after the appellate decision is made, or the party's appellate rights are exhausted.

§ 6 - **Miscellaneous Procedures**

At any time during the legal or factual proceedings the Parties have the right to petition the Commissioner. The Commissioner will consider the petition and deny or grant relief so requested in a timely manner.

§ 7 - **Relevant Addresses**

(a) Department

Fred Meyer, Esq.
Administrative Procedure Attorney
Suite 708, West Tower
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334
Email: fmeyer@oci.ga.gov

(b) Parties

Bruce P. Brown, Esq.
McKenna Long & Aldridge, LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
Email: bbrown@mckennalong.com

James Boswell, III, Esq.
King & Spalding, LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
Email: jboswell@kslaw.com

Jesica Eames
King & Spalding, LLP
1180 Peachtree Street, NE
Atlanta, Georgia 30309-3521
Email: jeames@kslaw.com

So ORDERED this, 17th day of December, 2009.



John W. Oxendine
Insurance and Safety Fire
Commissioner
State of Georgia

NON-PARTY PARTICIPANT FORM

1. Name of Party.
2. Name of attorney(s), if any.
3. Entity Type (i.e. insurer, provider, etc...).
4. Description of interest in the outcome of the legal issues.
5. Provide one mailing and email address to which documents
may be sent.

NON-PARTY ORAL ARGUMENT TIME REQUEST

1. Name of Party(ies) represented in Oral Argument.
2. Name of representative who will present oral argument.
3. Estimated time of oral argument

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served copies of the within and foregoing Notice, Order, and accompanying Exhibits by placing one copy in the United States Mail, postage prepaid, certified, with return receipt requested, and by placing one copy in the United States Mail, first class, with adequate postage thereon, properly addressed as follows:

Bruce P. Brown
McKenna Long & Aldridge, LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

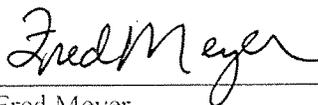
James Boswell, III
King & Spalding, LLP
1180 Peachtree Street, NE
Atlanta, GA 30308

Jesica Eames
King & Spalding, LLP
1180 Peachtree Street, NE
Atlanta, GA 30308

And by hand delivery of one copy upon the following:

Trey Sivley, Enforcement Division
604 West Tower, Floyd Building
No. 2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

This 17th day of December, 2009.



Fred Meyer
Administrative Procedures Attorney

Direct All Correspondence To:
Administrative Procedure Division
708 West Tower, Floyd Building
No.2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334
Telephone Number (404) 656-5875

OFFICE OF THE COMMISSIONER OF INSURANCE
STATE OF GEORGIA

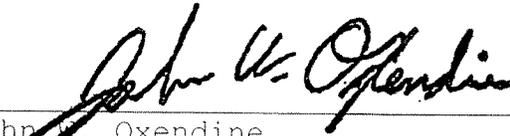
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CROSS BLUE SHIELD HEALTHCARE)
PLAN OF GEORGIA, INC.)
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FIRST AMENDED NOTICE OF PUBLIC HEARING

The Notice of Public Hearing ("Notice") is hereby amended to provide the date for the hearing in this matter, which was inadvertently omitted in the Notice. The third-paragraph of the Notice is amended to read as follows, to wit:

The public hearing on the legal issues in this matter will be held before the Commissioner, beginning at 10:30 A.M. on **February 18, 2010**, and continuing from time to time thereafter until this matter is finally concluded. The hearing will be held in the Hearing Room, 7th Floor, West Tower, Floyd Building, 2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334.

This 21st day of December, 2009.

A handwritten signature in black ink, reading "John W. Oxendine". The signature is written in a cursive style and is positioned above a horizontal line.

John W. Oxendine
Insurance and Safety Fire Commissioner
State of Georgia

Direct all Correspondence to:

Fred Meyer, Esq.
Administrative Procedure Attorney
Suite 708, West Tower
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334
Email: fmeyer@oci.ga.gov

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served copies of the within and foregoing Notice, Order, and accompanying Exhibits by placing one copy in the United States Mail, postage prepaid, certified, with return receipt requested, and by placing one copy in the United States Mail, first class, with adequate postage thereon, properly addressed as follows:

Bruce P. Brown
McKenna Long & Aldridge, LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

James Washburn
McKenna Long & Aldridge, LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

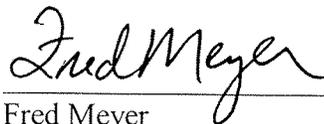
James Boswell, III
King & Spalding, LLP
1180 Peachtree Street, NE
Atlanta, GA 30308

Jesica Eames
King & Spalding, LLP
1180 Peachtree Street, NE
Atlanta, GA 30308

And by hand delivery of one copy upon the following:

Trey Sivley, Enforcement Division
604 West Tower, Floyd Building
No. 2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

This 21ST day of December, 2009.



Fred Meyer
Administrative Procedures Attorney

**Direct All Correspondence To:
Administrative Procedure Division
708 West Tower, Floyd Building
No.2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334
Telephone Number (404) 656-5875**