

ABC FOR HEALTH, INC., WISCONSIN
COALITION FOR ADVOCACY, and AARP,

Petitioners,

v.

Case No. 00-CV-1152

COMMISSIONER OF INSURANCE,

Respondent.

NOTICE OF APPEARANCE AND STATEMENT OF POSITION
OF RESPONDENT COMMISSIONER OF INSURANCE

Please take notice that respondent Commissioner of Insurance appears in this proceeding by her attorneys, James E. Doyle, Attorney General, and Peter C. Anderson, Assistant Attorney General, whose address and telephone number appear below.

Respondent states her position with respect to the petition for review filed by petitioners as follows:

1. Answering paragraph 1, ADMITS.
2. Answering paragraph 2, ADMITS.
3. Answering paragraph 3, ADMITS.
4. Answering paragraph 4, ADMITS that respondent's March 28, 2000, Findings of Fact, Conclusion of Law, and Order (herein, "decision and order") is a final administrative decision reviewable under Wis. Stat. § 227.52, to the extent it adversely affects the substantial interests of a person seeking review; DENIES that the decision and order adversely affects the substantial interests of the petitioners; ADMITS the remaining allegations contained therein.

5. Answering paragraph 5, ADMITS.

6. Answering paragraph 6, lacks information and knowledge concerning the relation between Wisconsin AARP and AARP sufficient to form a belief as to truth of the implicit allegation that Wisconsin AARP's appearance in the administrative proceedings was equivalent to AARP's appearance; DENIES that the term "limited" fairly reflects the participation allowed by the Commissioner; ADMITS the remaining allegations contained therein.

7. Answering paragraph 7, DENIES that the word "limited" fairly characterizes the opportunity provided the petitioners to present testimony and to examine witnesses; DENIES that testimony was limited to expert testimony; ADMITS the remaining allegations contained therein.

8. Answering paragraph 8, DENIES that the Commissioner merely noted that conversion funds were "public capital"; ADMITS the remaining allegations contained therein.

9. Answering paragraph 9, DENIES that the application of conversion funds for medical research and health care education as required by the order are not for the purpose of improving public health; ADMITS the remaining allegations contained therein but clarifies that the Commissioner required an initial dedication of not less than 35% of the conversion funds for community based programs that are preventative or directed at the health of broad populations.

10. Answering paragraph 10, DENIES the implicit allegation that the Commissioner simply accepted the appointments of BCBSUW; ALLEGES that the individuals nominated by BCBSUW are, and are acknowledged by the petitioners to be, highly qualified, respected and independent; DENIES that the PCHOAC members are appointed by the University of Wisconsin Medical School; ALLEGES that they must be appointed by the Board of Regents; DENIES that PCHOAC members may be appointed solely at the discretion of the Boards; ALLEGES that four

of the nine members must meet specified qualifications and be nominated by independent advocacy organizations and that one additional member of each PCHOAC is appointed by the Commissioner; ADMITS the remaining allegations contained therein.

11. Answering paragraph 11, DENIES.

12. Answering paragraph 12, DENIES that the decision and order lists AARP as a “Movant”; ALLEGES that the decision and order lists Wisconsin AARP as a “Movant”; lacks information and knowledge concerning the relation between Wisconsin AARP and AARP sufficient to form a belief as to truth of the implicit allegation that Wisconsin AARP's appearance in the administrative proceedings was equivalent to AARP's appearance; DENIES that the notice provided to petitioners conferred on petitioners' rights to seek review of the Commissioner's decision over and above those created by law; ADMITS the remaining allegations contained therein.

13. Answering paragraph 13, ADMITS.

14. Answering paragraph 14, DENIES that unspecified ABC staff members can be qualified by pleading as experts, for purposes of the rules of evidence or review of respondent's decision and order, regarding the needs of the uninsured and underinsured low-income populations in Wisconsin; DOES NOT DENY the remaining allegations contained therein.

15. Answering paragraph 15, ADMITS.

16. Answering paragraph 16, ADMITS.

17. Answering paragraph 17, DENIES that unspecified WCA staff members can be qualified by pleading as experts, for purposes of the rules of evidence or review of respondent's decision and order, regarding the needs of people with disabilities who are uninsured or underinsured; ADMITS the remaining allegations contained therein.

18. Answering paragraph 18, DENIES that AARP has a constituency or constituents in a legally relevant sense; DENIES that the interest of AARP's membership is solely in prevention or population-based health programs and not in medical research and health care education; DENIES the remaining allegations contained therein.

19. Answering paragraph 19, DOES NOT DENY.

20. Answering paragraph 20, DOES NOT DENY.

21. Answering paragraph 21, lacks information and knowledge sufficient to form a belief as to the truth of the allegation contained in the first sentence; lacks information and knowledge sufficient to form a belief as to the truth of the implicit allegation the Wisconsin AARP's appearance in the administrative proceedings was equivalent to AARP's appearance; ADMITS the remaining allegations contained therein.

22. Answering paragraph 22, DENIES that WCA is fairly characterized as a consumer advocacy organization; DOES NOT DENY that the other two petitioners are non-profit consumer advocacy organizations; DENIES the remaining allegations contained therein.

23. Answering paragraph 23, DENIES and ALLEGES that 100% of the conversion funds are required by the final order to be applied to improve the health of the public through medical research, health care education and preventative and population-based health programs.

24. Answering paragraph 24, DENIES that dedication of the conversion funds to fund legal and advocacy services by the petitioners is required by law in lieu of funding of medical research, health care education and community prevention and population-based health programs that will benefit the public; DENIES the remaining allegations contained therein.

25. Answering paragraph 25, DOES NOT DENY that ABC, WCA and AARP seek to represent the health care interests of their members or the individuals for whom they advocate; DENIES the remaining allegations contained therein.

26. Answering paragraph 26, lacks information and knowledge sufficient to form a belief as to the truth of the allegation contained in the first sentence; DENIES that the record supports WCA's claim that the conversion will adversely affect its substantial interest as a policyholder of a health insurance plan operated by or through BCBSUW.

27. Answering paragraph 27, lacks information and knowledge sufficient to form a belief as to the truth of the allegation contained in paragraph 26 that WCA is a policyholder of a health insurance plan operated by or through BCBSUW; in the event that allegation is true; DENIES the allegation contained in paragraph 27.

28. Answering paragraph 28, DOES NOT DENY that petitioners seek to represent the interests of classes of potential and existing policyholder who are also potential or existing clients or members of petitioners; DENIES that petitioners represent these classes or have constituents in a legally relevant sense; DENIES the remaining allegations contained therein.

29. Answering paragraph 29, DENIES.

30. Answering paragraph 30, DENIES.

31. Answering paragraph 31, DENIES.

32. Answering paragraph 32, DENIES.

33. Answering paragraph 33, DENIES.

34. Answering paragraph 34, DENIES.

35. Answering paragraph 35, DENIES.

36. Answering paragraph 36, DENIES.

37. Answering paragraph 37, DENIES.

38. Answering paragraph 38, ADMITS the allegation contained in the first sentence;
DENIES the remaining allegations contained therein.

39. Answering paragraph 39, DENIES.

40. Answering paragraph 40, ADMITS the allegation contained in the first sentence;
DENIES the remaining allegations contained therein.

41. Answering paragraph 41, DENIES.

42. Answering paragraph 42, DENIES.

43. Answering paragraph 43, DENIES.

44. Answering paragraph 44, DENIES.

45. Answering paragraph 45, DENIES.

46. Answering paragraph 46, DENIES.

47. Answering paragraph 47, DENIES.

48. Answering paragraph 48, DENIES.

49. Answering paragraph 49, DENIES.

50. Answering paragraph 50, DENIES.

51. Answering paragraph 51, DENIES.

52. Answering paragraph 52, DENIES.

53. Answering paragraph 53, DENIES.

54. Answering paragraph 54, DENIES.

55. Answering paragraph 55, DENIES.

56. Answering paragraph 56, DENIES.

57. Answering paragraph 57, DENIES.

58. Answering paragraph 58, DENIES.

59. Answering paragraph 59, ADMITS that part 1 of the order, relating to foundation governance, provides that the Commissioner shall appoint the members of the foundation board, that the order does not provide a specific rationale for the selection of each foundation board member appointed and that the persons appointed were proposed by BCBSUW; ALLEGES that the individuals nominated by BCBSUW are, and are acknowledged by the petitioners to be, highly qualified, respected and independent; DENIES the remaining allegations contained therein.

60. Answering paragraph 60, ADMITS the allegation contained in the first sentence that one application of the conversion proceeds may be for medical research; DENIES that conversion proceeds are required to be applied specifically for physician education; ALLEGES that one permitted application of the conversion proceeds is health care education; further ALLEGES that the final order permits application of up to 100% of the conversion proceeds for public health initiatives (which are defined as community preventative or population based health programs); further ALLEGES that part 2 of the order permits the members of a Public and Community Health Oversight and Advisory Committee (“PCHOAC”) by a two-thirds vote to increase or decrease the percentage required to be applied to public health initiatives, but that in absence of such decrease requires that not less than 35% of the conversion proceeds be applied for such public health initiatives; DENIES the remaining allegation contained therein.

61. Answering paragraph 61, ADMITS the allegations contained in the first sentence; but ALLEGES that four members are nominated and appointed by the Board of Regents or Board of Trustees from a list of nominees nominated by organizations meeting the criteria in the order; DENIES the allegations contained therein.

62. Answering paragraph 62, DENIES.
63. Answering paragraph 63, DENIES.
64. Answering paragraph 64, DENIES.
65. Answering paragraph 65, DENIES.
66. DENIES each and every allegation not expressly admitted herein.

AFFIRMATIVE DEFENSES

As and for her affirmative defenses, respondent alleges as follows:

1. The decision and order does not adversely affect the substantial interests of the petitioners. Petitioners are not aggrieved by the decision and order and/or lack standing to challenge it.

2. The copy of the petition for review bearing the signature of WCA's attorney which was served on respondent consisted of an authenticated copy which had been altered by WCA's attorney. Timely service of the petition by WCA was not effected.

WHEREFORE, respondent respectfully prays that the Court dismiss the petition for lack of subject matter jurisdiction, in the alternative, that the Court dismiss Wisconsin Coalition for Advocacy's petition for improper and untimely service on respondent, and that it affirm respondent's Findings of Fact, Conclusions of Law, and Order, dated March 28, 2000, as legally

correct, factually supported and within the scope of respondent's discretion granted by the Wisconsin Legislature.

Dated this 17th day of May, 2000.

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