

In the Matter of the Proposed Acquisition of Control of
Physicians Insurance Company of Wisconsin, Inc., by
American Physicians Capital, Inc., and
American Physicians Assurance Corporation ("Applicants"),

DECISION ON
STANDING AND
DISCOVERY

Case No. 04-C29283

Pursuant to the Pre-hearing Conference Memorandum dated June 8, 2005, the Applicants filed objection to the participation of Physicians Insurance Company of Wisconsin, Inc. ("PICW") as a party to this proceeding, and the Applicants and PICW each filed requests for authorization of discovery. Each also filed objections to the other's requests for authorization of discovery. The parties agreed at the pre-hearing conference that these matters were to be decided on briefs. The following decision is made after consideration of the filed briefs and supporting documents.

PICW request for admission as a party

The Physicians Insurance Company of Wisconsin, Inc. request for admission as a party is granted. PICW meets the applicable statutory standard for participation as a party to this proceeding:

"227.44 (2m) Any person whose substantial interest may be affected by the decision following the hearing shall, upon the person's request, be admitted as a party."

The courts have not construed this provision, but have addressed the closely related standard for a "person aggrieved" under s. 227.53, Stat. The Wisconsin Supreme Court describes that standard as follows:

"The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law. This approach is similar to the two-pronged standing analysis outlined by the United States Supreme Court . . . as follows: (1) Does the challenged action cause the petitioner injury in fact? and (2) is the interest allegedly injured arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question?" Waste Management of Wisconsin, Inc. v. Department of Natural Resources, 144 Wis. 2d 499, 505 (1988)

Applicants contend that PICW has no interest that is within the interests protected by s. 611.72, Stat. The Applicants' contention is misplaced.

The interests protected by s. 611.72, Stat., include protection of the insureds, the acquired insurer's ability to satisfy standards for licensure, a competitive marketplace, the financial stability of the acquired insurer, the interests of present and future policyholders, the public interest, and competent and trustworthy management (s. 611.72 (3), Stat.). PICW undoubtedly has a unique and specific interest in each of these statutorily protected zones of interest.

Applicants also contend that none of the protected interests asserted by PICW will be adversely impacted by its plan. Applicants assert they have made assurances, and this Office may impose conditions, so as to ensure that PICW's asserted protected

interests will not be affected. This contention puts the cart before the horse. The purpose of this proceeding is to determine whether Applicants' plan will adversely impact the interests protected by the statute. PICW is a person "whose substantial interest *may be affected*" [s. 227.44 (2m), Stat., emphasis added] by the decision in this case.

Requests for Admission generally.

The pre-hearing memorandum set a deadline of June 6, 2005, for parties to file objections to Requests for Admission. The Applicants filed the only objection, and only to the standing of PICW. Nevertheless, the Office is proceeding on the basis that participation by Mercy Health System Corporation, Aurora Health Care, Dean Health Systems Inc., Monroe Clinic Inc., Dr. David H. Moss and Northpoint Medical Group will be limited, with their interests largely represented by the Applicants. Similarly the Office expects the Wisconsin Medical Society participation will also be limited. It is unnecessary to further examine their status given their expected limited participation. For the purpose of discovery each of these shall be treated as parties.

Requests for discovery.

Applicants' and PICW's requests for discovery are granted subject to the following:

- 1) Depositions are authorized only after a response is served to interrogatories and requests for production.
- 2) The time for service of a response to interrogatories and requests for production is shortened to 20 days after the date of service. The parties shall consider invalid any service of discovery made prior to the date of this decision. The date of service shall be the date of service made after the date of this decision.
- 3) All discovery, including depositions, shall be completed prior to September 10, 2005.
- 4) Discovery disputes, including objections, motions to compel, and motions for protective orders, shall be addressed as provided under ch. 804, Stat.
- 5) The parties are expected to engage in informal discovery and to make every effort to mutually resolve discovery disputes before filing any motion.

Dated at Madison, Wisconsin, on July 20, 2005.



Jorge Gomez
Commissioner of Insurance