

In the Matter of the Acquisition of Control  
of Unity Health Plans Insurance Corporation  
by University Health Care, Inc.

FINAL DECISION

Case No. 04-C29300

Petitioner.

Fred Nepple, Hearing Examiner, Presiding

APPEARANCES

For the Petitioner:

Richard M. Seligman  
Julie M. Rusczek  
Michael, Best & Friedrich, LLP  
100 East Wisconsin Avenue, Suite 3300  
Milwaukee, Wisconsin 53202-4108

David J. Hanson  
Michael, Best & Friedrich, LLP  
One South Pinckney Street  
Madison, Wisconsin 53701

Other appearances:

For HMO-W, Incorporated:

Lorna J. Granger  
Senior Vice President and General Counsel  
Blue Cross and Blue Shield of Wisconsin  
401 W. Michigan Street  
Milwaukee, Wisconsin 53203

PRELIMINARY

Pursuant to a Notice of Hearing dated December 14, 2004, a hearing was held at 3:40 p.m. on December 16, 2004, to determine whether the Petitioner's application for approval of the plan for acquisition of control should be granted. The Commissioner of Insurance delegated authority to the Hearing Examiner to issue the final decision in this matter. Based on the record, the Commissioner of Insurance makes the following:

FINDINGS OF FACT

(1) University Health Care, Inc. (the "Petitioner"), 635 Science Drive, Suite 100, Madison, Wisconsin 53711, is a corporation organized and domiciled in Wisconsin.

(2) University Health Care, Inc. is a Wisconsin-domiciled non-stock, not-for-profit corporation that is controlled by three members: University of Wisconsin Hospitals and Clinics Authority; University of Wisconsin Medical Foundation, Inc.; and the University of Wisconsin Medical School.

(3) Unity Health Plans Insurance Corporation, 840 Carolina Street, Sauk City, Wisconsin 53583, is a Wisconsin domestic stock insurance corporation.

(4) The Petitioner filed with the Office of the Commissioner of Insurance an application for approval of a plan for a change in control of Unity Health Plans Insurance Corporation (the "Change in Control Plan"). This proceeding commenced on the filing date, October 1, 2004.

(5) The Petitioner was served with a Notice of Hearing.

(6) The Petitioner waived the right to a minimum ten-day notice of hearing and consented to the proceeding scheduled on December 16, 2004.

(7) The Petitioner fulfilled the filing requirements of s. Ins 40.02, Wis. Adm. Code.

(8) The Change in Control Plan will not violate the law or be contrary to the interest of the insureds of Unity Health Plans Insurance Corporation.

(9) After the Change in Control Plan is consummated, Unity Health Plans Insurance Corporation will be able to satisfy the requirements for the issuance of a license to write the lines of insurance for which it is presently licensed.

(10) The effect of the Change in Control Plan will not be to create a monopoly or substantially to lessen competition in any type or line of insurance in Wisconsin.

(11) The financial condition of University Health Care, Inc., individually, and its holding company system taken as a whole, are unlikely to jeopardize the financial stability of Unity Health Plans Insurance Corporation, or to prejudice the interests of its Wisconsin policyholders.

(12) There are no plans or proposals to liquidate any participating domestic insurer or any intermediate holding corporation, to sell their respective assets (other than investment portfolio transactions in the ordinary course of business), to consolidate or merge any participating insurer with any other person, or to make any other material change in their respective businesses, corporate structures, or managements other than described in the Change in Control Plan.

(13) The competence and integrity of the persons who would control the operation of Unity Health Plans Insurance Corporation are such that it will be in the interest of the policyholders and the public to permit the Change in Control Plan.

(14) Each of University of Wisconsin Hospitals and Clinics Authority, University of Wisconsin Medical Foundation, Inc., and the University of Wisconsin Medical School, as members in the succession of control of University Health Care, Inc., will be affiliates of Unity Health Plans Insurance Corporation following its acquisition by University Health Care, Inc. and must meet the requirements applicable to affiliates of insurance corporations that are domiciled in the State of Wisconsin.

(15) The Change in Control Plan does not allow University Health Care, Inc. or its members to employ proceeds of the conversion of Blue Cross & Blue Shield United of Wisconsin maintained in the public trust by the University of Wisconsin Medical School nor general purpose revenue from the State of Wisconsin to purchase or operate Unity Health Plans Insurance Corporation.

(16) HMO-W, Incorporated first filed a petition to be admitted as a party to this proceeding on December 15, 2004 ("Motion"). HMO-W, Incorporated waived objection to the hearing date and waived notice of the hearing pursuant to s. 227.44 (1).

(17) HMO-W, Incorporated appeared by counsel at the hearing. The Hearing Examiner reserved ruling on the Motion. However, the Hearing Examiner allowed HMO-W, Incorporated to fully participate as a party at the hearing. The Hearing Examiner has fully considered all the submissions of HMO-W, Incorporated including Exhibits 12, 13, 14, and 29. In addition, pursuant to stipulation of the parties, the following letters are admitted into the record:

- (a) Letter to Frederick C. Nepple, Esq., in his capacity as Hearing Examiner, from Lorna J. Granger, Senior Vice President and General Counsel of Blue Cross and Blue Shield of Wisconsin, dated December 17, 2004
- (b) Letter to Frederick C. Nepple, Esq., in his capacity as Hearing Examiner, from David J. Hanson of Michael Best & Friedrich LLP, dated December 17, 2004

#### CONCLUSION OF LAW

(18) The proposed findings of fact set forth above establish that the requirements of s. 611.72 and chs. 227 and 617, Wis. Stat., and ch. Ins 40, Wis. Adm. Code, have been satisfied and approval of the Change in Control Plan should be granted.

(19) HMO-W, Incorporated's submissions, and participation, in the hearing have been fully considered. However HMO-W, Incorporated's Motion is denied. HMO-W, Incorporated asserts that it has a "substantial interest" in this proceeding because it is the sole owner of 100% of the stock of Unity Health Plans Insurance Corporation. HMO-W, Incorporated's interest in the stock of Unity Health Plans Insurance Corporation, and its disposition of its interest, are not the subject of this proceeding. The scope of this proceeding is approval or disapproval of a plan of acquisition under s. 611.72 and ch. 617, Wis. Stat., and ch. Ins 40, Wis. Adm. Code. HMO-W, Incorporated's obligation or plans to transfer its interest in Unity Health Plans Insurance Corporation, if any, are not matters to be determined in this proceeding. Accordingly HMO-W has no substantial interest in this matter.

#### ORDER

NOW, THEREFORE, based upon the findings of fact and conclusion of law, I hereby order that:

(20) The Petitioner's request for approval of a plan for acquisition of control as described in the Change in Control Plan is approved.

(21) Approval of the Change in Control Plan does not include approval of any dividend payment or any portion of the plan that may contemplate payment of a dividend. Any future dividend request must be filed in accordance with Chapter 617 of the Wisconsin Statutes. Any such request will be reviewed at the time submitted and will be determined based on the insurer's status at that time, including the duration and results of operations subsequent to the acquisition.

(22) This Approval does not permit, and neither the Petitioner or Petitioner's members may, under the Change in Control Plan, assign, hypothecate, encumber or create a lien against the proceeds of the conversion of Blue Cross & Blue Shield United of Wisconsin maintained in the public trust by the University of Wisconsin Medical School for any purpose that is inconsistent with the Findings of Fact, Conclusions of Law, and Order in the matter of Case No. 99-C26038.

(23) HMO-W, Incorporated's petition to be admitted as a party is denied.

NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and judicial review,  
the times allowed for each, and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the Final Decision:

1. Rehearing.

Any person aggrieved by this Final Decision may petition for a rehearing within 20 days after the service of this Final Decision, as provided in s. 227.49, Wis. Stat. A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

A petition for rehearing must be filed with the Commissioner at the address below.

2. Judicial Review.

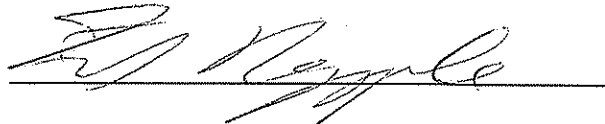
Any person aggrieved by this Final Decision has a right to petition for judicial review of this Final Decision as provided in s. 227.53, Wis. Stat. The petition must be filed in circuit court within 30 days after service of this Final Decision if there has been no petition for rehearing, or within 30 days after service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Commissioner of Insurance, Respondent  
Office of the Commissioner of Insurance  
P. O. Box 7873  
Madison, Wisconsin 53707-7873

A copy of the relevant statutory provisions is attached.

Dated at Madison, Wisconsin, this 17 day of December, 2004.



Fred Nepple  
Hearing Examiner

WISCONSIN STATUTES

At all times material, the relevant parts of s. 227.49, Wis. Stat., read as follows:

227.49 PETITIONS FOR REHEARING IN CONTESTED CASES. (1)

A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. . . .

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. . . .

At all times material, the relevant part of s. 227.52, Wis. Stat., read as follows:

227.52 JUDICIAL REVIEW; DECISIONS REVIEWABLE.

Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter. . . .

At all times material, the relevant parts of s. 227.53, Wis. Stat., read as follows:

227.53 PARTIES AND PROCEEDINGS FOR REVIEW. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. . . .

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. . . .

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. . . .

(d) The agency . . . and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. . . .