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4 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
5 STATE OF OREGON
6 for the
7 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
8 INSURANCE DIVISION

9 IN THE MATTER OF

10 Karen I. Kirsch, Petitioner

11 v.

12 Department of Consumer and Business Services,
13 Respondent,

14 and

15 Regence BlueCrossBlueShield, Intervenor

Case No. INS 0807007

**PETITIONER KIRSCH'S
OBJECTIONS TO
PROPOSED ORDER**

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19 Pursuant to ORS 183.460, Petitioner Karen Kirsch objects to the findings of fact and
20 conclusions of law set forth in June 23, 2009 Proposed Order of Administrative Law Judge Alison
21 Green Webster.

22 Petitioner objects to the second and third conclusions of law stated in the Proposed Order,
23 as they are not supported by the facts presented in this case.

24 Petitioner further objects to the Proposed Order's legal conclusions, in that it makes no
25 mention of the Department's refusal to comply with subpoenas served on Cory Streisinger and Carl
26 Lundberg. This willful suppression of evidence should have raised presumptions against the

1 Department in its conduct of the rate review process. Moreover, the Department's failure to
2 comply with these subpoenas violates petitioner's Due Process rights.

3 Petitioner further objects to the Proposed Order's legal conclusions because the Department
4 should have conducted rulemaking to determine the meaning of the terms set forth in ORS
5 742.005. See, e.g., Megdal v. Oregon State Board of Dental Examiners, 288 Or 293, 605 P.2d 273
6 (1980)(Dental Board should have carried out rulemaking to determine meaning of the phrase
7 "unprofessional conduct.") Not only has the Department failed to adopt such rules, but it claims to
8 have adopted certain standards, such as the NAIC's 55% standard on the target loss ratio, without
9 carrying out any rulemaking. The Proposed Order is flawed in that it improperly accepts the
10 Department's application of this standard. The Department should have adopted rules defining all
11 of the terms of ORS 742.005(3), (4), and (6).

12 The Proposed Order fails to make many pertinent findings of fact based on the evidence
13 presented. It also makes erroneous findings of fact.

14 The Proposed Order fails to properly connect the facts to the legal requirements of ORS
15 742.005. Even under a discretionary standard, the Department's approval decision must have been
16 supported by substantial evidence. It clearly was not.

17 DATED this 15th day of July, 2009.

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Charlie Ringo, OSB 89346
Attorney for Petitioner Kirsch