

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

Case No. INS-22-0114

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST dba KAISER
PERMANENTE, an Oregon Domestic
Nonprofit Corporation,

ORDER TO CEASE AND DESIST,
FINAL ORDER TO ASSESS CIVIL
PENALTIES, AND CONSENT TO
ENTRY OF ORDER

Respondent.

THIS IS A FINAL ORDER

The Director of the Department of Consumer and Business Services for the State of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 (“Insurance Code”), has conducted an investigation into the insurance-related activities of Kaiser Foundation Health Plan of the Northwest dba Kaiser Permanente (“Respondent”) and determined that Respondent engaged in activities constituting violations of the Insurance Code.

Respondent wishes to resolve and settle this matter with the Director.

Now, therefore, as evidenced by the authorized signatures subscribed on this Order, Respondent hereby CONSENTS to entry of this Order upon the Director’s Findings of Fact and Conclusions of Law as stated hereinafter.

FINDINGS OF FACT

The Director FINDS that:

1. Respondent has been an Oregon-authorized health care service contractor since December 30, 1981. Respondent’s NAIC company code is 95540.
2. In 2021, Respondent received a referral to cover a panniculectomy procedure for Oregon member “CK.”

Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 3. On August 9, 2021, after determining the procedure was cosmetic in nature,
2 Respondent denied the referral request.

3 4. CK appealed Respondent's denial.

4 5. On September 1, 2021, Respondent denied CK's appeal.

5 6. CK submitted an external review request challenging Respondent's denial. The
6 matter was assigned to an independent review organization ("IRO").

7 7. On January 25, 2022, the IRO determined the procedure was medically
8 necessary and notified Respondent of its decision. This determination required Respondent
9 to cover the procedure.

10 8. On March 1, 2022, a member of Respondent's medical staff incorrectly told CK
11 that Respondent's Utilization Review Board had to review the referral and determine the
12 procedure was medically necessary before it would be approved.

13 9. On April 5, 2022, Respondent once again denied the referral request.

14 10. Shortly thereafter, CK filed a complaint with the Division.

15 11. On or around April 12, 2022, Respondent notified CK it had approved the
16 referral. The procedure was performed on July 7, 2022.

17 CONCLUSIONS OF LAW

18 The Director CONCLUDES that:

19 12. ORS 743B.257(1) requires insurers to comply in a timely manner with the
20 decision of an IRO that reverses, in whole or in part, an adverse benefit determination. If
21 an insurer fails to comply with the decision, the Director may impose a civil penalty of not
22 more than \$1 million.

23 13. By failing to timely comply with the IRO's decision to approve CK's procedure
24 as medically necessary, including by subjecting the referral to a superfluous and invalid
25 second review, Respondent violated ORS 743B.257(1).

26 14. Because the Director has reason to believe that Respondent has been engaged,



1 is engaging, or is about to engage in violations of the Insurance Code, the Director may
2 issue an order to Respondent to cease and desist, pursuant to ORS 731.252(1).

3 15. The Director may impose a civil penalty of up \$10,000 *per violation* upon any
4 person who violates a provision of the Insurance Code, under ORS 731.988(1).

5 ORDERS

6 The Director issues the following ORDERS:

7 16. As authorized by ORS 731.252(1), the Director ORDERS Respondent to
8 CEASE AND DESIST from violating ORS 743B.257(1).

9 17. Based upon the foregoing and in accordance with ORS 731.988(1), the Director
10 ORDERS Respondent to pay a CIVIL PENALTY of \$25,000 for violating ORS
11 743B.257(1).

12 18. The \$25,000 CIVIL PENALTY assessed above is due and payable at the time
13 this Order is returned to the Division.

14 19. This Order is binding upon Respondent's successors and assigns.

15
16 SO ORDERED this 25th day of May, 2023.

17 ANDREW R. STOLFI, Director
18 Department of Consumer and Business Services

19
20 /s/ Dorothy Bean
21 Dorothy Bean, Chief of Enforcement
22 Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Kirk L. Dobbins, state that I am an officer of Kaiser and I am authorized to act on its behalf. I have read the foregoing Consent Order, and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. Kaiser voluntarily and without any force or duress consents to the entry of this Consent Order expressly waiving any right to a hearing in this matter. Kaiser understands that the Director reserves the right to take further actions to enforce this Consent Order or to take appropriate action upon discovery of other violations of the Insurance Code. Kaiser will fully comply with the terms and conditions stated herein.

Kaiser understands that this Consent Order is a public document.

Signature: /s/ Kirk L. Dobbins

Position Held: Vice President and Regional Counsel

State of Oregon

County of Multnomah

Signed or attested before me on this 18th day of May, 2023

by _____.

/s/ Pauline Marie Davis

Notary Public

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