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2 **STATE OF OREGON**  
3 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
4 **DIVISION OF FINANCIAL REGULATION**

5 **In the Matter of:**

**Case No. INS-17-0033**

6 **Kaiser Foundation Health Plan of the**  
7 **Northwest (“KFHPNW”),**

8 **Respondent.**

**FINAL ORDER TO CEASE AND**  
**DESIST AND ORDER ASSESSING**  
**CIVIL PENALTIES, ENTERED BY**  
**CONSENT**

9 **THIS IS A FINAL ORDER**

10 The Director of the Department of Consumer and Business Services (“DCBS”)  
11 for the State of Oregon (“the Director”) has determined that Kaiser Foundation Health  
12 Plan of the Northwest (“Respondent” or “KFHPNW”), did not comply with ORS 746.110  
13 and ORS 731.260, with respect to certain KFHPNW filings submitted to the Director.

14 KFHPNW submits to the Director’s jurisdiction and agrees to waive their rights to  
15 notice and an administrative hearing that arise under ORS 183.415, and without admitting  
16 or denying the factual allegations herein, wish to resolve this matter by consenting to  
17 entry of this Final Order.

18 Now therefore, as evidenced by the signatures subscribed in this Order,  
19 Respondent hereby consents to entry of this Order upon the Director’s Findings of Fact  
20 and Conclusions of Law.

21 **I. FINDINGS OF FACT**

22 The Director FINDS that at all times relevant to this Final Order:

23 1. KFHPNW is an Oregon domiciled health care service contractor that has  
24 been registered with DCBS since January 1981. Its National Association of Insurance  
25 Commissioner Number is 95540. The company’s business address is 500 NE  
26 Multnomah Street Suite 100, Portland, Oregon, 97232-2099.

Division of Financial Regulation  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
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1           2.       KFHPNW has approximately 293,000 members in plans that are regulated  
2 by DCBS.

3           3.       Since at least 2009 and continuing to on or about October 2016,  
4 KFHPNW provided health benefit plans to Oregon consumers through commercial plans.  
5 As part of the process of issuing plans to its members, KFHPNW is statutorily required to  
6 submit forms to the Director for approval, including Evidence of Coverage (“EOCs”)  
7 forms and Member Agreements. During this seven year period, KFHPNW’s EOCs and  
8 Member Agreements contained an Attorney Fee and Expense provision that stated, in  
9 relevant part:

10                   *[As applicable to EOCs]:*

11                   In any dispute between a Member and Company or Medical Group  
12 [Dental Group] or Kaiser Foundation Hospitals [Participating Providers or  
13 Participating Dental Offices] each party will bear its own attorneys’ fees  
and expenses.

14                   *[As applicable to Member Agreements]:*

15                   Except as provided under the “Dispute Resolution” section of this  
16 Agreement, in any dispute between a Member and Company or Medical  
17 Group or Kaiser Foundation Hospitals, each party will bear its own  
attorneys’ fees and other expenses in any dispute.<sup>1</sup>

18           4.       Upon information and belief, KFHPNW submitted multiple EOCs and  
19 Member Agreements to DCBS each year from 2009 to on or before October 2016.

20           5.       Accompanying each EOC and Member Agreement that KFHPNW filed  
21 with the Director, the company also submitted a Certificate of Compliance (“COC”).

22 The COC stated that the “filing submitted complies with the applicable Oregon laws,

23 \_\_\_\_\_  
24 <sup>1</sup> For examples of EOCs containing the provision, *see*: Individuals and Families Deductible Plan Evidence  
25 of Coverage (effective January 1, 2016 to December 31, 2016) (amended October 17, 2016); Large Group  
26 Deductible Plan Evidence of Coverage (approved June 17, 2011 ); Small Group Pediatric Dental Choice  
Preferred Provider Organization Plan Evidence of Coverage (approved May, 8, 2013); Small Group  
Deductible Dental Plan Evidence of Coverage (approved July 19, 2012). For an example of a Member  
Agreement containing the provision, *see* Kaiser Permanente Individuals and Families Traditional Plan  
Member Agreement (effective October 1, 2009 to December 21, 2010).



1 Oregon Administrative Rules, Oregon Insurance Bulletins [...]” KFHPNW further  
2 acknowledged that DCBS will, “rely on this certificate” and could take “corrective...  
3 action including monetary penalties” against KFHPNW if the filing is “false or  
4 misleading.”

5 6. After the Director approves KFHPNW’s EOCs and Member Agreements,  
6 KFHPNW makes these documents available to members by web-posting, mail or  
7 otherwise.

8 7. On or about September 2016, DCBS received a complaint from a Kaiser  
9 member, Paul Terdal, who alleged that KFHPNW’s Attorney Fee and Expense not only  
10 conflicted with ORS 742.061, but that the contractual provision adversely affected his  
11 ability to retain legal services in an action he filed against KFHPNW. Accordingly, Mr.  
12 Terdal filed a legal action against KFHPNW on a *pro se* basis (e.g., on his own). *See*  
13 *Paul Terdal v. KFHPNW*, Case Number 15-CV-30756 (State of Oregon Circuit Court for  
14 Multnomah County). Mr. Terdal subsequently engaged a lawyer to file an amended  
15 complaint.

16 8. After receiving Mr. Terdal’s information, DCBS informed KFHPNW that  
17 its Attorney Fee and Expense provision should be amended in light of ORS 742.061.

18 9. ORS 742.061 provides in relevant part:

19 Except as otherwise provided in subsections (2) and (3) of this section, if  
20 settlement is not made within six months from the date proof of loss is  
21 filed with an insurer and an action is brought in any court of this state  
22 upon any policy of insurance of any kind or nature, and the plaintiff’s  
23 recovery exceeds the amount of any tender made by the defendant in such  
24 action, a reasonable amount to be fixed by the court as attorney fees shall  
25 be taxed as part of the costs of the action and any appeal thereon.

## 26 II. CONCLUSIONS OF LAW

The Director CONCLUDES that:

1. Paragraphs 1-9 are incorporated.



- 1           2.       The Director has general jurisdiction over KFHPNW and the subject
- 2 matter described above. *See* ORS 731.236, ORS 731.402(1) (certificate of authority).
- 3           3.       The Director has enforcement authority over KFHPNW. ORS 731.256.
- 4           4.       KFHPNW is a “health service contractor.” ORS 750.005(4)(a).
- 5           5.       KFHPNW must file forms with the Director under ORS 742.003, pursuant
- 6 to ORS 750.055(1)(g).
- 7           6.       KFHPNW is statutorily obligated to make its policy forms available to its
- 8 members. ORS 742.046.
- 9           7.       KFHPNW is subject to ORS 742.061, pursuant to ORS 750.055(1)(g).
- 10          8.       Under ORS 746.110, “[n]o person shall ... place before the public ... in
- 11 any [ ] way ... [a] statement with respect to the business of insurance ... which is untrue,
- 12 deceptive or misleading.” KFHPNW’s EOCs and Member Agreements contained an
- 13 Attorney Fee and Expense provision that was untrue regarding the recovery of attorney
- 14 fees in a dispute, in violation of ORS 746.110.
- 15          9.       Under ORS 731.260, “[n]o person shall file ... with the Director ... any ...
- 16 certificate ... required or permitted to be so filed under the Insurance Code and known to
- 17 such person to be false or misleading in any material respect.” From 2009 to on or about
- 18 October 2016, KFHPNW violated ORS 731.260 by filing COCs with the Director that
- 19 purported to comply with Oregon law, when in fact, KFHPNW’s Attorney Fee and
- 20 Expense provision violated ORS 742.061.
- 21          10.       Pursuant to ORS 731.988(1), the Director may impose a civil penalty of
- 22 up to \$10,000 per violation upon any person who violates any provision of the Insurance
- 23 Code, ORS 731.004, *et seq.*

### III. ORDERS

Now therefore, the Director issues the following Orders:

1.       As authorized by ORS 731.252(1), the Director ORDERS KFHPNW to

1 CEASE AND DESIST from violating any provision of the Insurance Code or the  
2 administrative rules promulgated thereunder.

3 2. In accordance with ORS 731.988(1), the Director assesses a CIVIL  
4 PENALTY of One Hundred Thousand Dollars (\$100,000) for multiple violations of  
5 ORS 746.110 and ORS 731.260. The CIVIL PENALTY of \$100,000 and payable to  
6 DCBS at the time this Final Order becomes effective.

7 3. This is a “Final Order” under ORS 183.310(6)(b). Subject to that  
8 provision, entry of this Order in no way limits or prevents further remedies, sanctions, or  
9 actions which may be available to the Director under Oregon law to enforce this Order,  
10 for violations of this Order, for conduct or actions of KFHPNW that are not covered by  
11 this Order, or against any party not covered by this Order.

12  
13  
14 SO ORDERED this 10th day of April, 2017.

15 PATRICK M. ALLEN, Director  
16 Department of Consumer and Business Services

17 /s/ David Tatman  
18 David C. Tatman, Chief of Enforcement  
19 Division of Financial Regulation  
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**CONSENT TO ENTRY OF ORDER**

I, Andrew R. McCulloch, state that I am an officer of Kaiser Foundation Health Plan of the Northwest (“KFHPNW”), and that I am authorized to act on its behalf; that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of KFHPNW’s right to a hearing in this matter; that KFHPNW has been represented by counsel in this matter; that KFHPNW voluntarily and without any force or duress, consents to the entry of this Order, expressly waiving any right to a hearing in this matter; that KFHPNW executes this Order as a settlement of the matters referred to in the foregoing Order; that KFHPNW understands that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code by KFHPNW, and; that KFHPNW will fully comply with the terms and conditions stated herein.

KFHPNW understands that this Order is a public document.

By: /s/ Andrew R. McCulloch

Signature

By: Andrew R. McCulloch

Printed Name

Office Held: President

State of OREGON  
County of Multnomah

There appeared before me this 27th day of March, 2017, Andrew R. McCulloch, and stated that he/she was and is an officer of Respondent, and that he/she is authorized and empowered to sign this Order on behalf of Respondent, and to bind it to the terms hereof.

/s/ Dianna Christine Smith  
Notary Public - State of Oregon

Approved as to form:

/s/ William N. Wiechmann

03-28-17  
Date

Attorney for KFHPNW

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