

**BEFORE THE INSURANCE COMMISSIONER**

**FOR THE STATE OF DELAWARE**

In Re: The proposed affiliation of )  
BCBSD, INC., doing business as ) Docket No.  
Blue Cross Blue Shield of Delaware, )  
with HIGHMARK INC. )

**PRE-HEARING ORDER**

WHEREAS, the above parties have filed with the Delaware Department of Insurance (the "Department") a proposed plan to affiliate; and

WHEREAS, said proposed affiliation raises issues within the jurisdiction of this Department that require investigation pursuant to Chapter 3, Title 18, Delaware Code; and

WHEREAS, on notice, a public hearing will be conducted hereafter;

NOW, THEREFORE, preliminary to such hearing in this case, it is hereby ORDERED that:

1. A Hearing Officer (the "Hearing Officer") will be appointed and a hearing in this matter will be conducted pursuant to an inquiry initiated by the Delaware Insurance Commissioner (the "Commissioner") under the provisions of 18 *Del. C.* § 317, *et seq.* The conduct of the hearing is governed generally under the provisions of 29 *Del. C.* § 10101 *et seq.*, except as the same are in conflict with the provisions of Chapter 3 of Title 18 (*see e.g.*, 18 *Del. C.* § 326).

2. Highmark Inc. ("Highmark"), a Pennsylvania nonprofit corporation, shall be liable for the reasonable and necessary expenses of the Hearing, Hearing Officer, and Delaware Insurance Department including such outside counsel and experts as deemed necessary. The Hearing Officer shall hear and resolve disputes relating to such expenses.

3. The parties in interest hereto (each, a “Party” and together, the “Parties”) are presently the Department; BCBSD, Inc. (“BCBSD”), a nonprofit health service corporation regulated by the Department under the provisions of Chapter 63 of Title 18; and Highmark. By virtue of becoming a Party, Highmark has submitted itself to the jurisdiction of the Department in this matter for the purposes of: (i) acknowledging its agreement that the Commissioner shall have the authority to make a determination in accordance with the terms and conditions of this Order as to whether Highmark’s proposed affiliation with BCBSD should be approved; and (ii) establishing the terms and conditions under which a public hearing in this matter will be conducted and under which the Commissioner shall issue an order approving or disapproving the affiliation.

4. The Department, Highmark and BCBSD agree that the Attorney General of the State of Delaware, representing the State in its capacity as *parens patriae*, is also a Party. The Attorney General’s participation in this proceeding is without prejudice to any separate rights the Attorney General may possess and may elect to pursue in other venues which are otherwise available, as a matter of law. Any additional Parties shall be admitted by application to the Hearing Officer upon a hearing, at which the present Parties may be heard and approval by separate order based upon a showing that such person has a significant pecuniary interest in the proceeding, which interest is not adequately represented by an existing Party, and the protection of which otherwise will be impaired or impeded unless such person is admitted as a Party. The Department shall cause to be published in at least two newspapers of general, daily circulation in the State of Delaware for five (5) consecutive days, not later than twenty (20) days prior to the application deadline for such purpose set by the Hearing Officer, a notice of the opportunity to seek joinder as a Party to this proceeding.

5. Upon notification by the Department that its examination and review of the proposed transaction is complete, the Hearing Officer shall set a date for a public hearing on the merits of the proposed affiliation at the Department's offices in Dover (unless another place is designated by the Hearing Officer). The date to be set by the Hearing Officer shall be within thirty (30) days following the deadline set by the Hearing Officer for completion of all submissions from the Parties. Any person, whether or not a Party, may appear at the hearing and present testimony in aid of the inquiry; provided, however, that the Hearing Officer shall have the right to limit any testimony which the Hearing Officer determines is unduly repetitive, plainly irrelevant, immaterial or privileged. The Department shall cause to be published in at least two newspapers of general, daily circulation in the State of Delaware for five (5) consecutive days, not later than twenty (20) days prior to the hearing date, a notice of the date, time and place of the hearing and the right of persons to appear and testify.

6. Up to and including five (5) business days prior to the hearing, any person may make written submissions to be considered by the Hearing Officer. Documents which for ease of reference summarize, excerpt, or reformat materials previously submitted to the Hearing Officer, or documents requested to be submitted by a Party, may be submitted at the hearing or during such period subsequent to the hearing as the record remains open pursuant to Paragraph 11 of this Order. BCBSD and Highmark shall, at a minimum, submit those responses and documents as would be required for a "Form A" filing pursuant to Chapter 50, Title 18 Delaware Code.

7. The Parties shall have the right at the hearing to: (i) be represented by counsel; (ii) summon and examine witnesses identified to the Hearing Officer; (iii) submit evidence in written form; (iv) cross examine witnesses called by other Parties; and (v) present written and/or oral argument.

8. The purpose of the hearing is to determine whether the Commissioner should approve the affiliation of BCBSD with Highmark. In making such determination, the Hearing Officer shall apply the specific criteria for approving or disapproving a change of control of a Delaware domestic insurer found at 18 *Del. C.* § 5003(d)(1), and the Parties consent to these criteria being employed in this matter. Any testimony or documentary evidence which the Hearing Officer determines does not address a matter within the scope of the hearing is subject to exclusion by the Hearing Officer.

9. Any authorized discovery of a Party by another Party shall be conducted during the document submission period prior to the hearing, and shall be subject to the prior approval and supervision of the Hearing Officer.

10. Documentary evidence submitted into the record by any Party prior to, at or subsequent to the hearing shall be deemed to be a “public record” within the meaning of 29 *Del. C.* § 10002(g) and any applicable regulations, unless the Hearing Officer shall determine otherwise upon the application of any Party. Upon motion of a Party, and thereafter by order of the Hearing Officer, those documents considered by the Hearing Officer as part of the hearing record which are deemed to be documents which are not “public records” pursuant to applicable law shall be identified by title and date in a document filed herein.


11. The testimony at the hearing shall be transcribed with the costs of transcription to be borne by Highmark. The hearing record shall remain open following the conclusion of the hearing for a term to be set by the Hearing Officer, so that any Party may submit such additional documentation relevant to the scope of the hearing as the Hearing Officer may authorize at the conclusion of the hearing. Within twenty (20) days following the date of closing the record, the Hearing Officer shall submit a summary of the evidence, recommended findings of fact,

recommended conclusions of law, and a recommended decision in the form of a proposed order to the Commissioner pursuant to 29 *Del. C.* § 10126. Such proposed order may include such proposed conditions to which the recommended approval of the transaction should be subject if the Commissioner should approve it.

12. To the extent permitted by law, the Hearing Officer may supplement this Order with such other orders as may be required or useful in the administration of this proceeding.


13. The present Parties, by their counsel, shall acknowledge receipt of and their assent to this Order by signing, dating and returning a copy to the Department.

SO ORDERED this 20th day of October, 2010

  
\_\_\_\_\_  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner  
of the State of Delaware

CONSENTED TO:

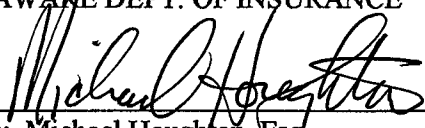
BCBSD, Inc.

By:   
\_\_\_\_\_  
Name: David S. Swayze, Esq.  
Title: Counsel for BCBSD, Inc.  
Date: \_\_\_\_\_

HIGHMARK INC.

By: \_\_\_\_\_  
Name: Frederick K. Campbell, Esq.  
Title: Counsel for Highmark Inc.  
Date: \_\_\_\_\_

DELAWARE DEPT. OF INSURANCE

By:   
\_\_\_\_\_  
Name: Michael Houghton, Esq.  
Title: Counsel for the Department  
Date: 11/01/10

DELAWARE DEPARTMENT OF JUSTICE

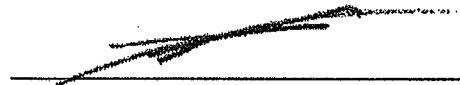
By: \_\_\_\_\_  
Name: Timothy Mullaney, Esq.  
Title: Director, Consumer Protection &  
Fraud Division  
Date: \_\_\_\_\_

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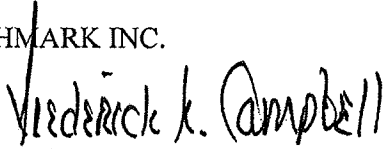
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By: \_\_\_\_\_  
Name: David S. Swayze, Esq.  
Title: Counsel for BCBSD, Inc.  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Michael Houghton, Esq.  
Title: Counsel for the Department  
Date: \_\_\_\_\_

HIGHMARK INC.

DELAWARE DEPARTMENT OF JUSTICE

By:   
Name: Frederick K. Campbell, Esq.  
Title: Counsel for Highmark Inc.  
Date: 10/21/10


By: \_\_\_\_\_  
Name: Timothy Mullaney, Esq.  
Title: Director, Consumer Protection &  
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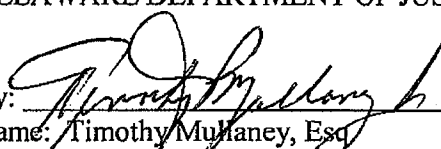
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Name: Michael Houghton, Esq.  
Title: Counsel for the Department  
Date: \_\_\_\_\_

DELAWARE DEPARTMENT OF JUSTICE

By:   
\_\_\_\_\_  
Name: Timothy Mulhoney, Esq.  
Title: Director, Consumer Protection &  
Fraud Division  
Date: 10/26/10