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6 Attorney for Plaintiffs

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 THOMAS E. BLANKENBAKER, D.C.,) No. CV2011-093099
10 an Arizona licensed chiropractic)
11 physician; SHAWN WHERRY, D.C., an)
12 Arizona licensed chiropractic physician;)
13 EMILIA INDOMENICO, an Arizona)
14 resident,)

**VERIFIED STATUTORY
SPECIAL-ACTION COMPLAINT**

(Mandamus)

Plaintiffs,

v.

15 CHRISTINA URIAS, in her official)
16 capacity as Director of the Arizona)
17 Department of Insurance,)

Defendant.

18
19 For their verified statutory special-action complaint against Defendant Christina Urias
20 ("Director"), in her official capacity as the Director of the Arizona Department of Insurance,
21 Plaintiffs allege as follows:

22 **Jurisdiction**

23
24 1. This verified complaint is a statutory special-action complaint against the Director,
25 in her official capacity as the Director of the Arizona Department of Insurance.

26 2. In substance, this verified complaint is an application for issuance of a writ of
mandamus under the terms of Arizona common law and, more particularly, under the terms of

1 Arizona statutory law. A.R.S. §§ 12-2021, *et seq.*

2 3. Arizona Rule of Procedure for Special Actions 1(a) provides that relief previously
3 obtained against an officer or person by a writ of mandamus shall be obtained in a special
4 action.

5 4. Arizona Rule of Procedure for Special Actions 1(b) provides that where a statute
6 expressly authorizes proceedings under mandamus, the proceedings shall be known as a
7 statutory special action. Where a statutory special action is involved, the special-action
8 procedural rules apply as to parties, procedure, interlocutory orders and stays, and judgments.
9

10 5. Arizona Rule of Procedure for Special Actions 2(a)(1) provides that any person
11 who previously could institute an application for a writ of mandamus may institute proceedings
12 for a special action.
13

14 6. This Court has personal jurisdiction over the Director under substantive Arizona
15 law and under the Arizona Rules of Civil Procedure.
16

17 7. Under A.R.S. § 12-2101 and Arizona Rule of Procedure for Special Actions 4(a),
18 this Court has subject-matter jurisdiction over this mandamus action.

19 8. Under Arizona Rule of Procedure for Special Actions 4(b), venue is proper in
20 Maricopa County.
21

22 **The Parties**

23 9. At all relevant times, Plaintiffs Thomas E. Blankenbaker, D.C. (“Dr.
24 Blankenbaker”) and Shawn Wherry, D.C. (“Dr. Wherry”), resided in Maricopa County, Arizona.
25 Dr. Blankenbaker and Dr. Wherry will often be referred to in this pleading as “the Doctors.”
26

10. The Doctors are chiropractic physicians licensed to practice, and practicing,

1 chiropractic medicine in the State of Arizona.

2 11. At all relevant times, Plaintiff Emilia Indomenico ("Indomenico") resided in
3 Maricopa County, Arizona.

4 12. Indomenico has regularly received chiropractic treatments from the Doctors.

5
6 13. At all relevant times, the Director was an Arizona resident and the Director of the
7 Arizona Department of Insurance.

8 **General Allegations**

9 14. The Doctors have many patients who have modest incomes.

10
11 15. Those patients are unable to take full advantage of the Doctors' chiropractic
12 procedures because health-insurance companies, including Blue Cross Blue Shield of Arizona
13 ("Blue Cross"), charge a higher co-payment for chiropractic procedures than the same health-
14 insurance companies charge patients obtaining medical or osteopathic procedures for identical
15 physical ailments, injuries, and complaints.

16
17 16. Indomenico is one of the Doctors' patients with a modest income.

18 17. Like many other of the Doctors' patients, Indomenico has not been able to take
19 full advantage of the Doctors' chiropractic procedures because Indomenico's health insurer
20 (Blue Cross) imposes a higher co-payment for procedures that chiropractic physicians perform
21 than Blue Cross imposes for medical procedures that medical and osteopathic physicians
22 perform for identical physical ailments, injuries, and complaints.

23
24 18. The Doctors, and other chiropractic physicians, have sent letters to the Director
25 advising her that Blue Cross was imposing a higher co-payment on their patients seeking
26 chiropractic procedures than Blue Cross imposes on patients seeking medical procedures for

1 identical physical ailments, injuries, and complaints.

2 **19.** The Doctors, and other chiropractic physicians, have explained to the Director that
3 what Blue Cross was doing violated Arizona law, specifically, A.R.S. § 20-461(B).

4 **20.** The Doctors, and other chiropractic physicians, have demanded that the Director
5 enforce the terms of A.R.S. § 20-461(B) against Blue Cross.
6

7 **21.** Under A.R.S. § 20-461(B), insurers commit an unfair claim-settlement practice if
8 they fail to apply deductibles or co-payments to all types of physicians, “without discrimination
9 to the usual and customary procedures of any type of physician.”
10

11 **22.** In response to the demands by the Doctors, and by other chiropractic physicians,
12 the Director refused to take any steps to stop Blue Cross from committing the unfair claim-
13 settlement practice of imposing a higher co-payment for the procedures that chiropractic
14 physicians perform than Blue Cross imposes for the procedures that medical physicians perform
15 for identical physical ailments, injuries, and complaints.
16

17 **23.** Indomenico, the Doctors’ regular chiropractic patient, also sent a letter to the
18 Director advising her that Blue Cross was imposing a higher co-payment on her for seeking
19 chiropractic procedures than Blue Cross imposes for someone seeking medical procedures for
20 identical physical ailments, injuries, and complaints.
21

22 **24.** Like the Doctors, and like other chiropractic physicians, Indomenico explained
23 that what Blue Cross was doing violated Arizona law, specifically, A.R.S. § 20-461(B).

24 **25.** Indomenico demanded that the Director enforce the terms of A.R.S. § 20-461(B)
25 against Blue Cross.
26

26 **26.** In response to Indomenico’s letter, the Director refused to take any steps to stop

1 the unfair claim-settlement practices that Blue Cross continues to commit.

2 **First Claim for Relief**

3 **(Mandamus on A.R.S. § 20-461(B) Enforcement)**

4 27. In this claim for relief, Plaintiffs incorporate by reference and re-allege all
5 allegations and paragraphs of this pleading, as if they were fully set out once again.
6

7 28. Under A.R.S. § 20-461(B), insurers commit an unfair claim-settlement practice if
8 they fail to apply deductibles or co-payments to all types of physicians, “without discrimination
9 to the usual and customary procedures of any type of physician.”
10

11 29. Under A.R.S. § 20-142(A), the Director has the mandatory duty to enforce the
12 provisions of Title 20 of the Arizona Revised Statutes against all insurers, including against
13 Blue Cross.

14 30. A.R.S. § 20-461(B) is a part of Title 20 of the Arizona Revised Statutes.

15 31. The Director has refused to enforce the provisions of A.R.S. § 20-461(B) against
16 Blue Cross.
17

18 32. By refusing to enforce the provisions of A.R.S. § 20-461(B) against Blue Cross,
19 the Director has violated A.R.S. § 20-142(A).
20

21 33. There is no equally plain, speedy, and adequate remedy at law to remedy the
22 Director’s refusal to enforce the provisions of A.R.S. § 20-461(B).

23 34. Under Arizona Rule of Procedure for Special Actions 3(a), the Director has failed
24 to perform a duty required by law as to which she has no discretion.
25

26 35. Under A.R.S. § 12-2021, Indomenico and the Doctors are beneficially interested
in having the Director enforce the provisions of A.R.S. § 20-461(B) against Blue Cross.

1 **50.** On information and belief, the Arizona Department of Insurance, through action
2 that the Director approved (directly or indirectly), approved Blue Cross's hiring of American
3 Specialty to manage Blue Cross's chiropractic benefits.

4 **51.** The Director approved that despite the fact that American Specialty has a long,
5 well-known history of limiting chiropractic-treatment programs to less than 12 visits per episode
6 of care.

7 **52.** American Specialty has done this regardless of objective and subjective findings,
8 with an estimated average range of 6.5 visits per episode of care and treatment.

9 **53.** But chiropractic professional guidelines almost universally recommend 25 visits
10 as a reasonable dose for a chiropractic patient.

11 **54.** On information and belief, American Specialty only allows two procedures per
12 visit, although the standard is four procedures per visit.

13 **55.** On information and belief, American Specialty has hampered, or effectively
14 prohibited, chiropractors from ordering advanced imaging and other necessary diagnostic
15 methods and techniques.

16 **56.** On information and belief, the Director knows about the coverage discrimination
17 described in this claim for relief, or should know about it, but has done nothing substantive to
18 end it, in violation of A.R.S. § 20-461(B).

19 **57.** Plaintiffs are directly affected by this coverage discrimination, and therefore have
20 standing to ask for a writ of mandamus to compel the Director to compel Blue Cross, and its
21 agent, American Specialty, to end the coverage discrimination.
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23
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Fourth Claim for Relief

(Mandamus to Enforce Proper Insurance-Policy Terms)

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2
3 **58.** In this claim for relief, Plaintiffs incorporate by reference and re-allege all
4 allegations and paragraphs of this pleading, as if they were fully set out once again.

5
6 **59.** The Blue Cross BluePortfolio Plus policy has exclusions that apply to all care
7 performed by a chiropractic physician.

8 **60.** But the Blue Cross BluePortfolio Plus policy only has exclusions that apply to
9 “maintenance services” that medical physicians and osteopathic physicians perform.

10
11 **61.** The practical effect of the Blue Cross BluePortfolio Plus policy does not cover a
12 chiropractic physician’s treatment of chronic-pain patients whose function is not expected to
13 improve.

14 **62.** On the other hand, the Blue Cross BluePortfolio Plus policy will cover treatment
15 of those patients by medical physicians and osteopathic physicians.

16
17 **63.** The Blue Cross BluePortfolio Plus policy will effectively only pay for short-term
18 chiropractic care if that care is leading to a functional improvement with gains that are
19 objectively measurable.

20
21 **64.** That discrimination does not apply with medical physicians and osteopathic
22 physicians.

23 **65.** Plaintiffs are directly affected by the Director’s approval of this insurance-policy
24 coverage discrimination, and therefore have standing to ask for a writ of mandamus to compel
25 the Director to compel Blue Cross to end the insurance-policy coverage discrimination.
26

Fifth Claim for Relief

(Mandamus to Enforce End of Consumer Fraud)

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2
3 **66.** In this claim for relief, Plaintiffs incorporate by reference and re-allege all
4 allegations and paragraphs of this pleading, as if they were fully set out once again.

5
6 **67.** On information and belief, the Director knows, or reasonably should know, that
7 Blue Cross has represented to policyholders and to the public that its healthcare insurance
8 policies cover all medically necessary chiropractic care.

9
10 **68.** But under American Specialty's guidelines, reimbursement for a chiropractic
11 adjustment is a mere \$26. The highest reimbursement for therapy is a mere \$18. Together, that
12 is just \$44. The patient copay, however, is a whopping \$40.

13 **69.** That means that Blue Cross will actually pay only \$4 per chiropractic visit after
14 the chiropractic patient pays the \$40 copay (which rarely to never happens).

15 **70.** Blue Cross, therefore, is providing an illusory benefit.

16
17 **71.** In other words, for chiropractic care, Blue Cross ends up paying nothing, or next
18 to nothing, in real dollars. That contradicts Blue Cross's marketing materials, which claim that
19 Blue Cross is covering chiropractic care when it is not doing that.

20
21 **72.** Blue Cross is therefore effectively deceiving the public and defrauding its
22 consumers (its policyholders).

23 **73.** The Director has a duty to keep Arizona insurers, including Blue Cross, from
24 deceiving the public and defrauding policyholders.

25
26 **74.** Plaintiffs are directly affected by the Director's failure to stop Blue Cross from
deceiving the public and defrauding policyholders. Plaintiffs therefore have standing to ask for

1 a writ of mandamus to compel the Director to stop Blue Cross from deceiving the public and
2 defrauding its policyholders concerning the actual coverage it is providing for chiropractic care.

3 **Sixth Claim for Relief**

4 **(Mandamus to Enforce Non-Discriminatory Physician Designations)**

5
6 **75.** In this claim for relief, Plaintiffs incorporate by reference and re-allege all
7 allegations and paragraphs of this pleading, as if they were fully set out once again.

8 **76.** On information and belief, the Director has allowed Blue Cross to create
9 discriminatory designations between chiropractic physicians on the one hand and medical
10 physicians and osteopathic physicians on the other hand.

11
12 **77.** Because of that failure to enforce proper insurance-company designations, Blue
13 Cross has created a system that has prevented chiropractic patients from receiving proper
14 reimbursement for chiropractic treatments.

15
16 **78.** The Director has a duty to end the discrimination by requiring the recognition of
17 chiropractors as primary physicians, and not as some form of specialists.

18
19 **79.** The Director has a duty to end the discrimination by requiring the recognition and
20 designations of chiropractors as primary care physicians entitled to the same sort of recognition
21 and designations as medical physicians and osteopathic physicians.

22
23 **80.** Plaintiffs are directly affected by the Director's failure to end the discriminatory
24 physician designations.

25 **WHEREFORE,** Plaintiffs apply for a writ of mandamus against the Director and pray
26 for judgment against the Director as follows:

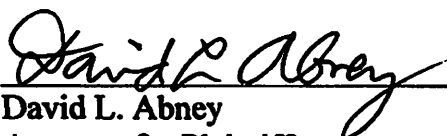
A. For an oral argument on the application under A.R.S. § 12-2027, because this

1 application for issuance of a writ of mandamus raises questions of law.

- 2 B. For entry of an Order commanding the Director to enforce the terms of A.R.S. §
3 20-461(B) and to perform the specific acts that the Director has a duty to perform,
4 as set out in this pleading.
5
6 C. For entry of an Order awarding costs of the case to Plaintiffs.
7
8 D. For entry of an Order awarding reasonable attorney's fees to Plaintiffs, in
9 accordance with A.R.S. § 12-2030.
10
11 E. For entry of an Order granting such other and further relief as the Court deems just
12 and proper.

13 **DATED** this 14th day of March, 2011.

14 **LAW OFFICE OF DAVID L. ABNEY**

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16 David L. Abney
17 Attorney for Plaintiffs
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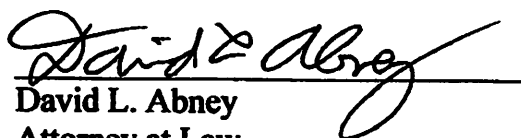
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Verification

In accordance with Arizona Rule of Civil Procedure 80(i) and A.R.S. § 12-2101, I, David L. Abney, the attorney signing this pleading, make this verification based on my personal knowledge:

1. I verify that the facts set out in this pleading are correct and accurate, to the best of my personal knowledge.
2. I verify that the pleading has the proper purpose of requiring a public official to perform a duty imposed on her by Arizona law.
3. I verify that the Plaintiffs are submitting this pleading in good faith.

EXECUTED under penalty of perjury on this 14th day of March, 2011.



David L. Abney
Attorney at Law