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F I L E D
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DEPARTMENT OF MANAGED HEALTH CARE
BY *[Signature]*
Filing Clerk

8 Attorneys for
Department of Managed Health Care
9

10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
11 OF THE STATE OF CALIFORNIA

12
13 IN THE MATTER OF:

Enforcement Matter No.: 13-321

14 **CALIFORNIA PHYSICIANS' SERVICE,
DBA BLUE SHIELD OF CALIFORNIA**

**ORDER TO CEASE AND DESIST
UNLAWFULLY DENYING SPEECH
THERAPY**

15 Respondent.
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18 Brent Barnhart, the Director of the Department of Managed Health Care (the Director), by and
19 through his designee, Carol L. Ventura, Deputy Director and Chief Counsel of the Office of
20 Enforcement, after investigation, determines as follows:

21 **I.**

22 **PARTIES**

23 1. The Director of the Department of Managed Health Care (the Department) is vested with
24 the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975, as
25 amended (Knox-Keene Act or the Act), pursuant to Health and Safety Code section 1340 et seq.

26 2. California Physicians' Service, dba Blue Shield of California (Blue Shield or the Plan) is
27 now, and has been since July 27, 1978, a full service plan (File No. 933 0043) licensed pursuant to
28 Health and Safety Code section 1353. Its principal place of business is located at 50 Beale Street, 22nd

1 Floor, San Francisco, CA 94105. Blue Shield is subject to the Knox-Keene Act and California Code of
2 Regulations, title 28, promulgated pursuant to the Knox-Keene Act.

3 **II.**

4 **STATUTORY AUTHORITY**

5 3. The Director has authority to adopt orders from time to time as are necessary to carry out
6 the provisions of the Knox-Keene Act. (Health & Saf. Code, § 1344(a).)

7 4. The Director may issue an Order directing a plan, solicitor firm, or any representative
8 thereof, a solicitor, or any person to cease and desist from engaging in any act or practice in violation of
9 the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the
10 Director pursuant to this chapter. (Health & Saf. Code, § 1391.)

11 5. Health and Safety Code section 1367(i), states that a health care service plan, such as
12 Blue Shield, shall provide to subscribers and enrollees all of the basic health care services included in
13 subdivision (b) of Health and Safety Code section 1345.

14 6. Health and Safety Code section 1345(b)(2), defines a basic health care service to include
15 ambulatory care services.

16 7. California Code of Regulations, title 28, section 1300.67(c), defines the scope of a basic
17 health care service by stating that ambulatory care services shall include diagnostic and treatment
18 services, physical therapy, speech therapy, occupational therapy services as appropriate, and those
19 hospital services, which can be reasonably provided on an ambulatory basis.

20 8. Health and Safety Code section 1386(b)(7), provides for disciplinary action by the
21 Director upon a showing that the Plan has engaged in any conduct that constitutes fraud or dishonest
22 dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

23 **III.**

24 **STATEMENT OF FACTS**

25 9. Blue Shield routinely and in the regular course of business receives requests from Blue
26 Shield enrollees seeking speech therapy services.

27 10. Since July 2011, Blue Shield has received at least 14 requests from enrollees seeking
28 speech therapy services which have been denied. The Department has received complaints from each of

1 these enrollees.

2 11. In 14 of the complaints received by the Department, Blue Shield and/or its contracted
3 provider groups have cited and/or quoted the Plan's medical policy on speech therapy as justification for
4 their denial of coverage for speech therapy services.

5 12. The Blue Shield medical policy on speech therapy states in relevant part as follows:

6 *“Speech therapy is the treatment of communication impairment and swallowing disorder*
7 *related to a specifically diagnosable disease, injury or congenital defect...;”* and *“Speech*
8 *therapy is considered **medically necessary** when **all** of the following criteria are met: [¶]*
9 *Speech therapy services are used in the treatment of communication impairment or*
10 *swallowing disorders resulting from illness, injury, surgery or a congenital anomaly of*
11 ***any** of the following: Nervous System [¶] Vocal Organs [¶] Swallowing Organs [¶]*
12 *Auditory Organs....”* [Capitalization and bolding in original.]

13 13. In each of the above 14 instances, Blue Shield and/or its contracted provider
14 groups unlawfully categorically denied coverage for speech therapy on the ground that the
15 enrollee did not have a sufficient physical condition to trigger coverage, and did not consider
16 whether the requested therapy was medically necessary to treat the enrollee's condition.

17 14. For children with developmental disabilities, expressive language disorders, and speech
18 delays, Blue Shield categorically denies coverage for speech therapy on the basis that the enrollee does
19 not have a physical condition such as a physical illness, injury, surgery or congenital anomaly.

20 15. Under the Act, speech therapy is a required basic health care service, and therefore Blue
21 Shield's denial of coverage for speech therapy based on a lack of physical impairment is illegal and
22 contrary to the Act.

23 16. The Department sent each of the 14 above-referenced cases involving speech therapy that
24 were denied by the Plan to the Independent Medical Review (IMR) for an evaluation of the medical
25 necessity of the enrollee's requested service.

26 17. The IMR determined that the requested speech therapy were medically necessary in each
27 of the 14 cases.

28 18. Blue Shield and/or its contracted provider groups continue to illegally deny enrollee
requests seeking services for speech therapy.

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IV.
FINDINGS

19. Blue Shield's denials of enrollee requests seeking services for speech therapy on the basis that the enrollee has not suffered a physical condition triggering coverage under the plan's clinical guidelines constitutes an act and/or practice in violation of the law, including, but not limited to the following provisions of the Act (and related regulations):

(a) Health and Safety Code section 1367(i) for failing to provide medically necessary basic health care services – ambulatory care services -- as defined in Health and Safety Code section 1345(b)(2);

(b) California Code of Regulations, title 28, section 1300.67(c) for failing to provide medically necessary basic health care services which this code section defines as including speech therapy;

(c) Health and Safety Code section 1386(b)(7) for engaging in conduct that constitutes an unfair business practice as defined by Business and Professions Code section 17200;

(d) Health and Safety Code section 1386(b)(3) for failure to provide basic health care services to enrollees.

(e) Health and Safety Code section 1386(b)(1) for operating at variance with the Plan's Evidence of Coverage (EOC).

(f) California Code of Regulations, title 28, section 1300.74.30(h) for interfering with the right of an enrollee to obtain independent medical review.

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ORDER TO CEASE AND DESIST

THEREFORE, the Director of the Department of Managed Health Care, by and through his designee, Carol L. Ventura, Deputy Director and Chief Counsel for Enforcement, hereby orders:

ORDERS:

1. **IT IS HEREBY ORDERED THAT** the Plan is to cease and desist from any act and/or practice that unlawfully denies coverage for speech therapy services to enrollees in violation of the law, including but not limited to Health and Safety Code section 1367(i), and California Code of Regulations,

1 title 28, sections 1300.67(c), 1300.74.30(h). Specifically, Blue Shield is hereby ordered to immediately
2 cease and desist from denying coverage of speech therapy on the basis that an enrollee does not have a
3 sufficient physical ailment to trigger coverage under the Plan's clinical guidelines.

4 2. **IT IS HEREBY FURTHER ORDERED THAT** the Plan is to cease and desist from
5 engaging in any act or practice that unlawfully interferes with an enrollee's right to an IMR.

6 3. **IT IS HEREBY FURTHER ORDERED THAT** the Plan is to cease and desist from
7 engaging in any act and/or practice of failing to reimburse enrollees for past, present and future
8 medically necessary speech therapy services.

9 The Department reserves its right to amend this Order to include additional information,
10 including but not limited to, an accusation, Order, or other request for relief, including but not limited to
11 reimbursement to past, present and future Blue Shield enrollees who have been illegally denied
12 medically necessary speech therapy services; or for penalties incurred arising out of the aforementioned
13 findings.

14 This Order shall be effective immediately and shall continue in full force and effect until further
15 Order by the Director.

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17 Dated: November 18, 2013

BRENT A. BARNHART
Director
Department of Managed Health Care

19
20 By: 
21 CAROL L. VENTURA
22 Deputy Director | Chief Counsel
23 Office of Enforcement
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