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JUL 15 2005
CLARENCE MADDOX
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

IN RE: MANAGED CARE LITIGATION

MDL NO. 1334

THIS DOCUMENT RELATES ONLY TO
PROVIDER TRACK CASES

MASTER FILE NO.
00-1334-MD-MORENO

CHARLES B. SHANE, M.D., et al.
Plaintiffs,

v.

Case No. 04-21589-
CIV-MORENO

HUMANA INC., et al.,
Defendants.

KENNETH A. THOMAS, M.D., et al.
Plaintiffs

v.

Case No. 03-21296-
CIV-MORENO

BLUE CROSS AND BLUE SHIELD
ASSOCIATION, et al.,
Defendants.

**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT
AMONG WELLPOINT, INC. AND PHYSICIANS, PHYSICIAN GROUPS
AND PHYSICIAN ORGANIZATIONS, SETTING FORM AND CONTENT
OF NOTICE TO THE CLASS AND SCHEDULING SETTLEMENT HEARING**

The Court having reviewed and considered the Joint Motion for Preliminary Approval of Settlement Concerning Claims Against Defendant WellPoint Entities filed on July 11, 2005, and having reviewed and considered the terms and conditions of the proposed settlement (the "Settlement") as set forth in the Settlement Agreement dated July 11, 2005 (the "Settlement Agreement"), a copy of which has been submitted with the joint motion, and on the basis of such submissions, together with any other submissions by the parties in support of the joint motion, and all prior proceedings had in this consolidated multi-district litigation, good

cause for this Order having been shown,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration at the Settlement Hearing provided for below. The Court concludes that the Settlement is sufficiently within the range of reasonableness to warrant the conditional certification of the settlement Class, the scheduling of the Settlement Hearing and the circulation of notice to members of the Class, each as provided for in this Order.

Conditional Certification of the Class

2. For purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3), solely with respect to WellPoint, Inc. and the other Released Persons ("WellPoint"), the actions styled Shane v. Humana Inc., et al., Master File No. 00-1334-MD-MORENO ("Shane I"), Shane v. Humana Inc., et al., Case No. 04-21589-CIV-MORENO ("Shane II"), and Thomas v. Blue Cross and Blue Shield Assoc., Case No. 03-21296-CIV-Moreno/Klein ("Thomas") (collectively, the "Actions"), are conditionally certified as a class on behalf of the following persons (the "Class"):

Any and all Physicians, Physician Groups and Physician Organizations who provided Covered Services to any Plan Member or any other individual enrolled in or covered by a plan offered or administered by any Person named as a defendant in the Complaints or by any of their respective current or former Subsidiaries or Affiliates, in each case from August 4, 1990 through the Preliminary Approval Date.

Representative Plaintiffs are conditionally certified as representatives of the Class. Class Counsel are appointed and designated as counsel for the Class. This conditional certification of the settlement class and class representatives is solely for purposes of effectuating the proposed Settlement. If the Settlement Agreement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class and appointment of class representatives shall be void and of no further effect and the parties to the Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the Settlement Agreement.

Based on the Court's review of the joint motion and supporting materials, the Court conditionally finds that the proposed Class satisfies Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. If after the final fairness hearing the Court approves the settlement, the Court will elaborate.

Settlement Hearing; Right to Appear and Object

3. A Settlement Hearing shall take place before the Court on December 2, 2005, at 9:00 A.M./P.M., in the United States Courthouse, Courtroom IV, Tenth Floor, Federal Justice Building, 99 Northeast Fourth Street, Miami, Florida, 33132 to determine:

- (a) whether the Court should certify the Class and whether Representative Plaintiffs and Class Counsel have adequately represented the Class;
- (b) whether the Settlement, on the terms and conditions provided for in the Settlement Agreement, should be finally approved by the Court as fair, reasonable and adequate;
- (c) whether the Released Claims of the Class Members in the Actions should be dismissed on the merits and with prejudice as to WellPoint and the other Released Parties;
- (d) whether the Court should permanently enjoin the assertion of any claims that arise from or relate to the subject matter of the Actions against WellPoint or any of the other Released Parties by the members of the Class, the other defendants in the Actions or any other persons;
- (e) whether the application for attorneys' fees, costs and expenses to be submitted by Class Counsel in connection with the Settlement Hearing should be approved;
- (f) whether the application for incentive awards to Representative Plaintiffs to be submitted in connection with the Settlement Hearing should be approved;

(g) whether each Tag-Along Action should be dismissed with prejudice as to Released Claims against WellPoint with the exception of any Tag-Along Action with respect to any named plaintiff that has timely submitted an Opt-Out request; and

(h) whether the Court should permanently enjoin the assertion of any claims that arise from or relate to conduct by WellPoint and other Released Parties that occurred on or before the Effective Date of the Agreement against Blue Cross and Blue Shield Association or any Blue Cross and/or Blue Shield licensee or wholly-owned subsidiary of such licensee by the Releasing Parties;

(i) whether the Court should dismiss all claims for monetary relief against Blue Cross and Blue Shield Association asserted in Thomas;

(j) such other matters as the Court may deem necessary or appropriate.

4. The Court may finally approve the proposed Settlement Agreement at or after the Settlement Hearing with any modifications agreed to by the settling parties and without further notice to the members of the Class.

5. Any Class Member who or which has not timely and properly provided notice of an election to Opt-Out of the Class and the Settlement Agreement in the manner set forth below, and any other interested Person, may appear at the Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matters to be considered at the Hearing, provided, however, that no Class Member who or which has elected to Opt-Out from the Class shall be entitled to object; and provided further that no Person shall be heard, and no papers, briefs or other submissions shall be considered by the Court in connection with its consideration of those matters, unless on or before October 18, 2005 [**Objection Date - 60 days after Notice Date**], such Person:

(a) files with the Court a notice of such Person's intention to appear, together with a written statement of objection setting forth such Person's objections, if any, to the matters to be considered and the basis therefore, together with all other support, papers or briefs that he, she or it wishes the Court to consider and intends to rely upon at the Settlement Hearing, and

(b) serves copies of all such materials either by hand or overnight delivery, upon the following counsel:

Harley S. Tropin
Kozyak Tropin & Throckmorton, P.A.
2525 Ponce de Leon Blvd., 9th Floor
Miami, Florida 33134

And

Craig A. Hoover
Hogan & Hartson, LLP
555 13th Street, NW
Washington, DC 20004

Stan Blumenfeld
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, CA 90071

All responses by the settling parties to objections shall also be served by hand or overnight delivery on the objecting Person or his, her or its attorney. Objectors' papers may be supplemented ten (10) days prior to the Settlement Hearing following the filing of any responsive papers by the settling parties and served in the manner and on counsel described above.

6. The Court may adjourn the Settlement Hearing, or any adjournment thereof, including the consideration of the application for attorneys' fees, costs and expenses, without further notice of any kind other than an announcement of such adjournment in open court at the Settlement Hearing or any adjournment thereof.

Form and Timing of Notice

7. As soon as practicable after entry of this Order, but no later than 30 days after this Order is entered, Class Counsel or its designee shall cause copies of the Notice of Class Actions and Proposed Settlement in the form attached as Exhibit D to the Settlement Agreement (the "Mailed Notice"), the form of which is hereby approved, and in the case of members of the Class who are individuals, including the claim form substantially in the form attached as Exhibit A to the Settlement Agreement (the "Claim Form"), the form of which is hereby approved, to be mailed by first-class mail, postage pre-paid, to all potential members of the Class to the extent that such Class members can be identified with reasonable diligence from (a) solely in WellPoint's discretion, WellPoint's books and records, at their last known address appearing in such books and records, and/or (b) records maintained by the American Medical Association (the "AMA") and/or a vendor associated therewith, to the extent that such records can be obtained for this purpose within the schedule for notice provided in this Order.

8. As soon as practicable after the mailing of the Mailed Notice, and in all events no later than 30 days prior to the Opt-Out Deadline that is set forth below, Class Counsel shall cause to be published in the legal notices sections of the national editions of *The Wall Street Journal* and *USA Today* one day a week for two consecutive weeks, a summary notice substantially in the form of Exhibit F to the Settlement Agreement (the "Published Notice"), the form of which is hereby approved. In addition, to the extent reasonably practicable within the schedule contemplated by this Order, Class Counsel shall cause the Published Notice to be published at least once no later than 30 days prior to the Opt-Out Deadline in a nationwide periodical addressing issues of concern to physicians, such as *The Journal of the American Medical Association* or *The American Medical News*.

9. Beginning on the earliest date that notice is provided pursuant to paragraphs 7 and 8 of this Order and continuing through the deadline for members of the Class to return a completed Claim Form (as that date is specified in the Settlement Agreement), Class Counsel shall make available to potential members of the Class printable versions of the Mailed Notice and the Claim Form on the public websites maintained by or on behalf of at least five of the law firms serving as Class Counsel in the Actions.

10. Prior to the Settlement Hearing, Class Counsel shall serve and file a sworn statement attesting to compliance with paragraphs 7, 8, and 9 this Order. Costs of providing the notice to the Class that is specified in this Order shall be paid as set forth in the Settlement Agreement.

11. The notice to be provided as set forth in paragraphs 7, 8, and 9 of this Order is hereby found to be the best means of notice to members of the Class that is practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Settlement Hearing to all persons affected by and/or entitled to participate in the Settlement or the Settlement Hearing, in full compliance with the requirements of due process and the Federal Rules of Civil Procedure.

Ability of Class Members to Opt-Out of Settlement Class

12. All members of the Class who wish to opt-out of the Class must do so by sending written notice of their election to opt-out to the Settlement Administrator at the address set forth in the notices to be provided pursuant to paragraphs 7 and 8 of this Order. To be considered timely, and thereby effectively exclude a person from the Class, the envelope delivering a completed opt-out request for such person must be postmarked by no later than October 18, 2005 (the "Opt-Out Deadline"). Prior to the Settlement Hearing, Class Counsel or their designee shall submit to the Court a sworn statement setting forth the names and addresses of each member of the Class who has timely elected to opt-out from the Class.

13. Any potential member of the Class that does not properly and timely request exclusion from the Class shall be included in such Class and, if the Settlement is approved and becomes effective, shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers and covenants not to sue described therein, whether or not such person shall have objected to the Settlement and whether or not such person makes a claim upon, or participates in, the Settlement Fund or the other benefits to the Class to be provided under the Settlement Agreement.

Other Provisions

14. All proceedings against or concerning WellPoint in the Actions, other than proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement and the Settlement Agreement should be approved and the Class permanently certified, all members of the Class are hereby barred and enjoined from commencing or prosecuting any action asserting any Released Claims.

15. All discovery and any other proceedings against or concerning WellPoint in Tag-Along Actions (as defined in Section 15.1 of the Settlement Agreement) to the extent of Released Claims, other than proceedings as may be necessary to carry out the terms and conditions of the proposed Settlement, are hereby stayed and suspended until further order of the Court.

16. No discovery with regard to the Settlement or the Settlement Agreement shall be permitted as to any of the parties to the Settlement Agreement other than as may be directed by the Court upon a proper showing by the party seeking such discovery by motion properly noticed and served in accordance with this Court's Local Rule 7.1.

17. Pending entry of an Order setting forth the final determination of the Court with respect to the parties' application for final approval of the Settlement, WellPoint is hereby relieved of any and all obligations under paragraph 2(b) of the Agreed Order For Preservation of Records entered in Shane I action on January 12, 2001, to preserve Future Documents (as defined in the January 12, 2001 Order) created on or after the date of this Order, and of any and all obligations under any similar preservation orders that may exist or be entered in any of the Actions.

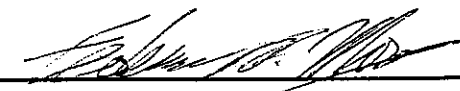
18. WellPoint is authorized to communicate with Class Members regarding the provisions of the Settlement Agreement, so long as such communications are not inconsistent with the agreed upon communications concerning the Settlement Agreement. WellPoint shall refer to the Settlement Administrator or Class Counsel any inquiries from Class Members about claims to be filed under the Settlement Agreement.

19. Any Class Member may enter an appearance in the Actions, at his, her or its own expense. Any Class Member who does not enter an appearance will be represented by Class Counsel.

20. Neither the Settlement Agreement nor any provision therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession on the part of any of the Representative Plaintiffs, the Signatory Medical Societies, Class Counsel, any members of the Class, WellPoint or any other person of any liability or wrongdoing by them, or that the claims and defenses that have been, or could have been, asserted in the Actions are or were not meritorious, and neither the Settlement Agreement nor any such communications shall be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Representative Plaintiffs, the Signatory Medical Societies, any member of the Class or any other person has or has not suffered any damage.

21. In the event that the Settlement Agreement is terminated or is not consummated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void, except to the extent expressly provided to the contrary in the Settlement Agreement, and without prejudice to the rights of the parties to the Settlement Agreement before it was executed.

DONE AND ORDERED after a hearing in open court at the United States District Courthouse in Miami, Florida, on July 13, and signed this 14th day of July, 2005.



HON. FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE