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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Proposed Dividends of

File No. OV-2010-00062

PACIFICARE LIFE AND
HEALTH INSURANCE
COMPANY,

ADMINISTRATIVE ORDER AND NOTICE
OF OPPORTUNITY TO BE HEARD
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 1215.8

Respondent.

TO: RESPONDENT PACIFICARE LIFE AND HEALTH INSURANCE COMPANY

You are subject to the Order of the Insurance Commissioner of the State of California
("the Commissioner") and Notice of Opportunity to Be Heard as set forth below.

ORDER

WHEREAS:

1. Respondent, PacifiCare Life And Health Insurance Company ("Respondent") is commercially domiciled in the state of California under California Insurance Code ("CIC") 1215.13 and is registered with the Commissioner under CIC 1215.4 because it is part of a holding company system that includes the United Health Group;
2. The Commissioner has authority to administer and enforce the Holding Company Act commencing with CIC 1215. (CIC sections 1215 et seq., and 12921) (the "Act");
3. On December 8, 2010, pursuant to CIC 1215.4(f) of the Act, Respondent purported to notify the Commissioner that Respondent intended to pay \$120 million in ordinary dividends on December 24, 2010 (the "Dividend Notice"). Specifically, Respondent indicated that it intended to pay \$118.8 million to PacifiCare Health Plan Administrators Inc., and \$1.2 million to PacifiCare Health Systems, LLC;

- 1 4. Ordinary dividends must be paid out of policyholders' surplus (also termed "statutory
2 surplus"); and specifically from a subcategory of policyholders' surplus termed
3 "unassigned funds (surplus)." (Statement of Statutory Accounting Principles, No. 72,
4 para. #12.i.);
- 5 5. As of September 30, 2010 Respondent's total policyholders' surplus was \$773 million;
- 6 6. Respondent is also currently the respondent in an enforcement action being brought by the
7 California Department of Insurance ("the Department") under the Unfair Practices Act
8 (UPA), specifically, CIC 790 et seq., for violation of policyholders' legal and contractual
9 rights (CDI File No. UPA-2007-00004; OAH File No. 2009061359) (the "UPA Action");
- 10 7. Penalties against insurers for violations of the UPA are paid out of policyholders' surplus;
- 11 8. As set forth in the Statement of Position, filed by the Department in the official
12 administrative record of the UPA Action, the Department has contended that it has already
13 proven or will prove that Respondent has committed at least 992,936 acts in violation of
14 the CIC and/or California insurance regulations (See Statement of Position in the UPA
15 Action, attached hereto as Exhibit 1);
- 16 9. CIC 790.035 specifies that the potential civil penalty for each violation of the UPA is up
17 to \$5,000 for each non-willful act and up to \$10, 000 for each willful act. If Respondent
18 were determined to be liable for an average penalty of only \$1,000 per act, Respondent
19 would face a penalty of nearly \$1 billion (992,936 proven violations multiplied by \$1,000
20 equals \$992,936,000), an amount far in excess of Respondent's policyholders' surplus;
- 21 10. As the calculation in the previous paragraph demonstrates, Respondent's potential liability
22 in the UPA Action could easily consume all of Respondent's \$773 million of
23 policyholders' surplus;
- 24 11. Respondent has notified the Department that group health policies are no longer being
25 sold under the PacifiCare Life and Health Company license. Beginning January 1, 2010,
26 those former PacifiCare policyholders have been offered comparable coverage under
27 United HealthCare of California policies. As a result, by the end of 2010, Respondent will
28 no longer sell any group health insurance products or collect any premium for its group
health insurance products in California. The Department believes that individual health
insurance coverage in California is underwritten by American Medical Security Life
Insurance Company, an affiliate of Respondent. Therefore, coverage underwritten by
PacifiCare Life and Health Insurance Company is no longer offered, sold or issued in
California;
12. After the end of 2010, Respondent will no longer be able to replenish or contribute to its
statutory surplus or policyholders' surplus from California health insurance premiums
because it will no longer be receiving such premiums;
13. CIC 1215.5(a)(5) requires Respondent to maintain surplus that is both reasonable in
relation to its outstanding liabilities, and adequate to its financial needs, after paying
dividends. Respondent's financial needs include reasonable provision for payment of
anticipated penalties in the UPA action;

- 1 14. Because Respondent faces a potential civil liability well in excess of its entire surplus, let
2 alone its unassigned funds, any reduction of its surplus through dividends of \$120 million
3 or any amount, would render Respondent's policyholders' surplus unreasonably low in
4 relation to Respondent's outstanding liabilities and inadequate to its financial needs, in
5 violation of CIC 1215.5(a)(5);
- 6 15. Payment of a dividend by Respondent to any shareholder, prior to final resolution of
7 UPA-2007-00004 and prior to making full payment of any and all penalties associated
8 with the UPA-2007-00004 would reduce Respondent's policyholders' surplus.

9 NOW, THEREFORE,

10 IT IS HEREBY ORDERED that Respondent shall not pay an ordinary dividend of \$118.8
11 million to PacifiCare Health Plan Administrators Inc., and shall not pay an ordinary
12 dividend of \$1.2 million to PacifiCare Health Systems, LLC., which dividends are
13 described in Respondent's purported Dividend Notice delivered to the Department on
14 December 8, 2010.

15 IT IS FURTHER ORDERED that if Respondent desires or intends to pay any dividend of
16 any amount to any person or entity on any future date, Respondent shall give a new notice
17 to the Commissioner pursuant to CIC 1215.4(f), and any such notice and dividend shall be
18 subject to the terms and conditions of that section.

19 NOTICE OF OPPORTUNITY TO BE HEARD

20 If Respondent wishes to be heard on this matter Respondent may appear pursuant to
21 California Insurance Code ("CIC") 1215.8 at the following place and time:

22 **Date:** Tuesday, December 21, 2010
23 **Time:** 10:00 AM
24 **Location:** Offices of the Insurance Commissioner
25 45 Fremont Street, 23rd floor
26 San Francisco, CA 94105

27 If Respondent wishes to be heard but is unable to appear at the place and time indicated
28 above, Respondent must contact Susan Stapp at (415) 538-4403 no later than the close of
business on Friday, December 17, 2010, to make alternative arrangements. Alternative
arrangements are not guaranteed to be available. If Respondent fails to appear or to contact the
specified individual as indicated above, Respondent will forfeit all rights to appear and contest

1 this Order under CIC 1215.8.

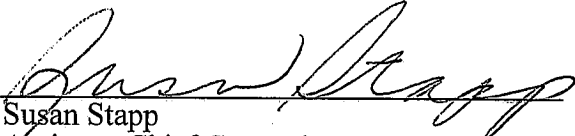
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3 Date: December 13, 2010.

Steve Poizner
Insurance Commissioner

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By 
Susan Stapp
Assistant Chief Counsel

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8 I have read the foregoing and agree that the Respondent will comply with and act in accordance
9 with this order:

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11 Date: _____, 2010

By _____

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