

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court Case No.
District Court Case No. A-19-792978**

UnitedHealth Group, Inc., United Healthcare Insurance Company, Inc., United Health
Care Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life
Insurance Company, Inc., Sierra Health-Care Options, Inc., Health Plan of Nevada,
Inc.,
Petitioners

Electronically Filed
Aug 25 2020 01:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

The Eighth Judicial District Court, State of Nevada, Clark County, and
the Honorable Nancy L. Alf, District Court Judge,
Respondent

and

Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-
Mandavia, P.C., Crum Stefanko and Jones, Ltd.,
Real Parties in Interest.

**PETITIONER'S MOTION FOR LEAVE TO EXCEED WORD LIMIT
FOR WRIT OF PROHIBITION, OR, ALTERNATIVELY, MANDAMUS**

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Petitioners UnitedHealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc., UMR, Inc., Oxford Health Plans, LLC (incorrectly named in District Court Complaint as Oxford Health Plans, Inc.), Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. (“Petitioners” or “United”) request leave under NRAP 28(g) and NRAP 32(a)(7)(D) to file a Petition for Writ of Prohibition, or, alternatively, Mandamus, that exceeds the 7,000 word limit set forth in NRAP 21(d) by 6,993 words. The Petition is assigned to the Nevada Supreme Court as the underlying case originated in the Eighth Judicial District’s Business Court. Further, all issues presented in the Petition raise questions of statewide public importance and questions of first impression involving the scope of ERISA preemption of state common law claims arising out of ERISA plans, which the Nevada Supreme Court may wish to address. *See* NRAP 17(a)(9); NRAP 17(a)(12). The Declaration required under NRAP 37(a)(7)(D)(ii) is attached as **Exhibit 1**.

On June 8, 2020, NRAP 21 was modified to add a 7,000 word limit for writs of mandamus. Previously, there had been no word limit for writs. Permission to exceed the new word limit by 6,993 words (for a total of 13,993 words) should be granted for two reasons. First, the briefing before the district court to on the issues raised in United’s writ was complex, voluminous and extensive. United’s Motion

to Dismiss totaled 43 pages, the Plaintiffs' Opposition papers totaled 44 pages, and United's Reply papers totaled 36 pages—123 pages in all. After the briefing, the district court held a hearing on the Motion to Dismiss that resulted in a 120-page hearing transcript. Ultimately, the district court entered a 40-page written order denying the Motion to Dismiss. *See* Appendix to Petition. Given the lengthy written order and the extensive briefing and argument on which it was based, United was unable to fully address the district court's findings within NRAP 21's 7,000 word limit.

Second, the Petition raises complex issues of federal law concerning whether the Employee Retirement Income Security Act of 1974 ("ERISA") preempts an out-of-network health care provider's state law claims against an insurer/plan administrator. Because the Nevada Supreme Court has not yet spoken to the specific issues raised in the Petition, United cited extensive federal and out-of-state case law from jurisdictions across the country to ensure completeness in its presentation to the Court.

Petitioners have presented all relevant authorities and considerations in this briefing as thoroughly and succinctly as possible. Where practicable, Petitioners have provided truncated arguments, and have minimized citations where multiple binding authorities stated similar propositions in similar ways. Even so, the writ

petition contains 13,993 words,¹ which exceeds the NRAP 21 word limit by 6,993 words. Leave to exceed the word limit is necessary to adequately address the questions presented, which concern issues of statewide importance, and have wide-sweeping implications for insurers and out-of-network medical providers in Nevada. Moreover, the requested word limit extension is consistent with the limit the Nevada Supreme Court has imposed on opening appellate briefs. *See* NRAP 32(a)(7)(A)(ii) (permitting an opening appellate brief to contain up to 14,000 words). Accordingly, good cause exists for an extension of the word limit to allow for the issues raised in the Petition to be briefed thoroughly.

Dated: August 21, 2020

/s/ D. Lee Roberts, Jr.

D. Lee Roberts, Jr., Esq.

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¹ NRAP(A)(7)(C) provides that the disclosures statement, table of contents, table of authorities, certificate of service, and certificate of compliance with these Rules do not count toward a brief's page- or type-volume limitation.

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC and that on August 21, 2020, I filed a MOTION FOR LEAVE TO EXCEED WORD LIMIT FOR WRIT OF PROHIBITION, OR, ALTERNATIVELY, MANDAMUS with the Clerk of the Nevada Supreme Court and served a copy of the Motion to the addresses shown below (in the manner indicated below).

VIA U.S. MAIL:

The Honorable Judge Nancy L. Allf
Eighth Judicial District Court, Department No. 27
Regional Justice Center
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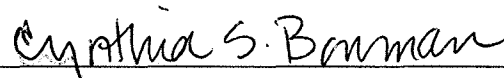


EXHIBIT 1

EXHIBIT 1

**DECLARATION OF D. LEE ROBERTS, JR., IN SUPPORT OF MOTION
TO EXCEED WORD LIMIT FOR WRIT PETITION**

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

1. I, D. Lee Roberts, Jr., under penalty of perjury, declare that I am a Nevada licensed lawyer with Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC and that I am counsel for Petitioners UnitedHealth Group Incorporated, United Healthcare Insurance Company, United Health Care Services, Inc., UMR, Inc., Oxford Health Plans, LLC (incorrectly named in District Court Complaint as Oxford Health Plans, Inc.), Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

2. Petitioners request leave under NRAP 28(g) and NRAP 32(a)(7)(D) to file a Petition for Writ of Prohibition, or alternatively, Mandamus, that exceeds the 7,000 word limit in NRAP 21(d), by 6,993 words, for a total of 13,993 words.

3. As discussed in the motion, Petitioners have presented all relevant authorities and considerations in their Petition as thoroughly and succinctly as possible, and have shortened and streamlined portions of the brief, where possible. Leave to exceed the 7,000 word limit is needed due to both (1) the voluminous briefing at the district court level on the issues raised in the Petition and (2) the

complex and novel issues raised by the Petition. The district court Motion to Dismiss briefing to which the Petition pertains totaled 123 pages, the hearing transcript was 120 pages and the district court's written order denying the Motion to Dismiss was 40 pages. Moreover, the Petition deals with complex issues of federal law—namely, whether the Employee Retirement Income Security Act of 1974 (“ERISA”) preempts an out-of-network medical provider's state law claims.

4. Leave to exceed the word limit is necessary in order to adequately address the questions presented, which concern issues of statewide importance, and have wide-sweeping implications for insurers and out-of-network medical providers in Nevada.

5. Good cause exists for an extension of the word limit to allow for the issues raised in the Petition to be briefed thoroughly and fairly.

DATED: August 21, 2020



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