

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court Case No. 81680
District Court Case No. A-19-792978**

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

Electronically Filed
Nov 30 2020 09:29 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. Allf, 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 REPLY IN SUPPORT OF 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 Reply in support of their Petition for Writ of Prohibition, or, alternatively, Mandamus, that exceeds the 7,000 word limit set forth in NRAP 21(d) by 3,086 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 and Reply raise questions of statewide public importance and questions of first impression involving the scope of ERISA preemption of an out-of-network provider’s 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 32(a)(7)(D)(ii) is attached as **Exhibit 1**.

Petitioners believe this Motion may be unnecessary but bring it in an abundance of caution. On August 25, 2020, Petitioners filed a Motion for Leave to Exceed the 7,000 word limit for their Writ Petition. On September 21, 2020, this Court entered an order granting that Motion and giving Petitioners leave to file a Petition consisting of no more than 13,993 words. **Exhibit 2**. The Order also gave

the Real Parties in Interest permission to file an Answer to the Petition not to exceed 13,993 words and gave Petitioners permission to file a reply brief. However, the order was silent as to the permissible length of the reply brief. NRAP 21(d) provides that “Unless the court directs otherwise, the same page and type-volume limits apply to any answer, reply, or amicus brief allowed by the court.” Therefore, Petitioners believe that the word limit for their Reply in support of the Petition is also 13,993 words, in which case this Motion would not be required. However, in the event Petitioners have misunderstood the September 21, 2020 order and/or NRAP 21(d), they bring this Motion seeking permission to exceed NRAP 21(d)’s 7,000 word limit for replies by 3,086 words.

Permission to exceed the new word limit by 3,086 words (for a total of 10,086 words) should be granted for similar reasons to those that supported the Court’s order granting Petitioners’ prior Motion to Exceed Word Limit for the Writ Petition. The Writ Petition contained 13,993 words and the Real Parties’ Answer to the Petition contained 13,853 words. Real Parties’ Answer raises numerous arguments regarding ERISA preemption and cites to extensive federal and out-of-state case law that it was necessary for Petitioners to address and distinguish in their Reply. 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 Reply contains 10,086 words,¹ which exceeds the NRAP 21 word limit by 3,086 words. Leave to exceed the word limit is necessary to thoroughly address the case law and arguments presented in the Real Parties' Answer which concern issues of statewide importance, and have wide-sweeping implications for insurers and out-of-network medical providers in Nevada. Accordingly, good cause exists for an extension of the word limit to allow for the issues raised in the Answer to the Petition to be briefed thoroughly.

Dated: November 30, 2020

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.

Colby L. Balkenbush, Esq.

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Attorneys for Petitioners

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 November 30, 2020, I filed a MOTION FOR LEAVE TO EXCEED WORD LIMIT FOR REPLY IN SUPPORT OF 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 EFLEX ELECTRONIC FILING SYSTEM:

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VIA U.S. MAIL:

The Honorable Judge Nancy L. Allf
Eighth Judicial District Court, Department No. 27
Regional Justice Center
200 Lewis Ave.,
Las Vegas, Nevada 89155

/s/ Cynthia S. Bowman

EXHIBIT 1

EXHIBIT 1

**DECLARATION OF COLBY L. BALKENBUSH IN SUPPORT OF
MOTION TO EXCEED WORD LIMIT FOR REPLY IN SUPPORT OF
WRIT PETITION**

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

1. I, Colby L. Balkenbush, 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 Reply in support of their Petition for Writ of Prohibition, or alternatively, Mandamus, that exceeds the 7,000 word limit in NRAP 21(d), by 3,086 words, for a total of 10,086 words.

3. As discussed in the motion, Petitioners have presented all relevant authorities and considerations in their Reply 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 (1) the length of the Real

Parties in Interest's Answer which contains 13,853 words, (2) the voluminous briefing at the district court level on the issues raised in the Petition and (3) the complex and novel issues raised by the Petition and Answer which address 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 arguments and case law raised in Real Parties' Answer to the Writ Petition, 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 arguments and case law raised in Real Parties' Answer to be briefed thoroughly and fairly.

DATED: November 30, 2020

/s/ Colby L. Balkenbush
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EXHIBIT 2

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNITED HEALTHCARE INSURANCE
COMPANY; 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.; AND
UNITEDHEALTH GROUP, INC.,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NANCY L. ALLF, DISTRICT JUDGE,
Respondents,

and

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD.; TEAM
PHYSICIANS OF NEVADA-
MANDAVIA, P.C.; AND CRUM
STEFANKO AND JONES, LTD.,
Real Parties in Interest.

No. 81680

FILED

SEP 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DIRECTING ANSWER

In this original petition for a writ of mandamus or prohibition, petitioners seek a writ directing the district court to vacate its order and enter an order dismissing real parties in interests' claims (1) as subject to conflict preemption under ERISA; (2) as subject to complete preemption; and (3) for failure to adequately allege claims under NRCP 12(b)(5).

Having reviewed the petition, it appears that an answer may assist this court in resolving this matter. Therefore, real parties in interest,

on behalf of respondents, shall have 28 days from the date of this order to file and serve an answer, including authorities, against issuance of the requested writ. In addition to addressing the merits of the petition in its answer, real parties in interest should also address the propriety of writ relief. Petitioners shall have 14 days from service of the answer to file and serve any reply.¹

It is so ORDERED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Silver, J.
Silver

cc: Hon. Nancy L. Alf, District Judge
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
McDonald Carano LLP/Las Vegas
Eighth District Court Clerk

¹Good cause appearing, we also grant petitioners' motion to exceed word length. NRAP 32(a)(7)(D). In the interest of fairness, real parties in interest may likewise file an answer not to exceed 13,993 words—the length of petitioners' writ petition.