



Annotated Title 50, chapter 4, part 10 [Conversion Statute], enactment of which was initiated by the Commissioner of Insurance [Commissioner], and other provisions of Montana nonprofit law regulated by the Attorney General are more directly applicable to the Transaction and should control. Superimposing the narrow Bulk Reinsurance Statute thwarts the joint regulatory authority of the Conversion Statute and deprives Montanans of its substantial benefits by needlessly multiplying the approval proceedings and requiring decision makers to reconcile inconsistent legal standards. BCBSMT-HCSC respectfully move the Hearing Examiner for an express ruling that the provisions of Montana Code Annotated § 33-2-1212 do not apply to the Application here.

### ARGUMENT

**1. By its plain language, the Bulk Reinsurance Statute does not apply to the Transaction.**

BCBSMT is a health service corporation regulated under Title 33, chapter 30 of the Montana Insurance Code. Montana Code Annotated § 33-30-102, the statute upon which CSI relies, provides:

(1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: 33-2-1212 [Bulk Reinsurance Statute]; 33-3-307; 33-3-308; 33-3-401; 33-3-431; 33-3-701 through 33-3-704; 33-17-101; Title 33, chapter 2, part 19; Title 33, chapter 17, parts 2 and 10 through 12; and Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict, the provisions of this chapter prevail.

[BCBSMT-HCSC emphasis supplied.]. BCBSMT-HCSC do not disagree that, as required by

Montana Code Annotated § 33-30-102, the Bulk Reinsurance Statute should be analyzed to determine its applicability to a health service corporation's reinsurance transaction. A close reading of the Statute, however, demonstrates that it cannot be applicable to all transactions and more cannot be applicable to the Transaction that is the subject of the Application here.

By its plain language, the Bulk Reinsurance Statute can only apply to health service corporations that are organized as domestic mutual insurers. It provides:

**33-2-1212. Bulk reinsurance -- mutual insurers.** (1) A domestic mutual insurer may reinsure all or substantially all its business in force, or all or substantially all of a major class of its business, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. An agreement may not become effective unless filed with the commissioner and approved by the commissioner in writing after a hearing on the agreement.

(2) The commissioner shall approve an agreement within a reasonable time after filing if the commissioner finds it to be fair and equitable to each domestic insurer involved and that the reinsurance if effectuated would not substantially reduce the protection or service to its policyholders. If the commissioner does not approve the agreement, the commissioner shall notify each insurer involved in writing specifying the reasons for disapproval.

(3) The plan and agreement for reinsurance must be approved by vote of not less than two-thirds of each domestic mutual insurer's members voting on the plan and agreement at meetings of members called for the purpose, pursuant to reasonable notice and procedure that the commissioner may approve. . . .

Mont. Code Ann. § 33-2-1212 (bold in original; underscore emphasis supplied). A “domestic mutual insurer” is “an incorporated insurer without capital stock, and the governing body of which is elected by the policyholders.” Mont. Code Ann. § 33-3-102 (1).

BCBSMT is not a domestic mutual insurer.

- It is incorporated without capital stock. Amended Articles of Incorporation of Blue Cross and Blue Shield of Montana [Art. Inc.], Exhibit [Exh.] 1, art. IV, (“This corporation is not organized for profit, it will not issue any stock and no

part of its assets, income, or earnings shall be distributed to its members, Directors, or officers, except for services actually rendered to the corporation.”).

- Its corporate powers are exercised exclusively by its Board of Directors. Art. Inc., Exh. 1, art. V (“The corporate powers of the corporation shall be exercised by its Board of Directors, who shall have the sole voting power on all matters.” (emphasis supplied)); art. VI (“ . . . in no event, shall any class of members have any voting rights or any property interest in the corporation.”); Bylaws of Blue Cross and Blue Shield of Montana [Bylaws], Exh. 2, art. II, sec. 2.1 (“There shall be three classes of membership . . . none of which shall exercise any voting rights or have any property interest in the Corporation nor shall they have any of the rights of a ‘Member’ as granted under the Montana Nonprofit Corporation Act, as amended.”); art. III, sec. 3.1 (“The Board of Directors shall have supervision, control and direction of the affairs of the Corporation . . . and shall exercise all corporate powers for this Corporation.”(emphasis supplied)).
- BCBSMT’s governing body, the Board of Directors, is not elected by the policyholders. Only the Board of Directors nominates and elects the Directors. Bylaws, Exh. 2, art. III, sec. 3.5 (“At the last regular meeting of the Board each calendar year, the Board shall nominate and elect Directors for any expiring Directorships, as deemed necessary the Board.” (emphasis supplied)).

BCBSMT is a mutual benefit corporation. Art. Inc., Exh. 1, heading; Bylaws, Exh. 2, art. I, sec. 1.1. Thus, BCBSMT does not come within the plain language of the Bulk Reinsurance Statute. Other health service corporations may be organized as domestic mutual insurers, and if

they are, it is appropriate for 33-2-1212 to be applied to them. Citation to the section within the general application guidelines of Montana Code Annotated § 33-30-102, however, must not be construed to arbitrarily override a selected corporate structure and other insurance and nonprofit corporation law under which it operates. *See* Mont. Code Ann. § 1-3-225 (“Particular expressions qualify those which are general.”). Importantly, the Conversion Statute, nonprofit corporation statutes, and the Consent Order entered by BCBSMT and CSI, under which the Transaction the Parties agree the Transaction should be approved, all protect “the fundamental nature of [this] health service corporation” as provided in Title 33, chapter 30. Mont. Code Ann. § 33-30-102 (2), -103.

**2. The Transaction is more than reinsurance.** The Transaction is much more than a simple reinsurance transaction. For example,

- a. HCSC is acquiring a multitude of BCBSMT contracts (with groups, providers, vendors, agents, and others);
- b. HCSC is offering to hire all BCBSMT employees;
- c. HCSC is assuming pension liabilities and is acquiring pension assets;
- d. in total, HCSC is assuming a substantial amount of liabilities which exceed policyholder liabilities;
- e. HCSC is acquiring land and fixtures, furniture, and equipment;
- f. HCSC is acquiring some subsidiaries; and
- g. HCSC is acquiring BCBSMT Marks (including the Blue Cross name).

As a result, BCBSMT is selling to HCSC “all or substantially all of its property,” which is a transaction subject to and governed by Montana Code Annotated § 35-2-617, part of the

nonprofit law under which BCBSMT is organized and which the Conversion Statute expressly invokes. *See e.g.*, Mont. Code Ann. §§ 50-4-704, -707, -715. That section provides in part:

A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board . . . .

Mont. Code Ann. § 35-2-617 (1). In contrast, Montana Code Annotated § 33-2-1212 applies only to the reinsurance of the “business in force” of a “domestic mutual insurer” which, as explained above, BCBSMT is not.

Montana Code Annotated § 35-2-617 plainly is the statute that most applies to the entity and coupled with the comprehensive Conversion Statute is the law that should apply to the Transaction here. The overlay of the limited review of bulk reinsurance under Montana Code Annotated § 33-2-1212 provides no additional protection. Simply, there is no need to rely on the Bulk Reinsurance Statute to approve this business combination Transaction.

**3. The Conversion Statute provides comprehensive review and approval.** The recently enacted (2005) Conversion Statute provides for comprehensive review and approval of nonprofit conversion transactions. The Conversion Statute includes extensive and detailed criteria for coordinated and joint approval by the Montana Attorney General in Montana Code Annotated § 50-4-715 and the Montana Commissioner of Insurance, Montana Code Annotated § 50-4-717. These provisions specify a far broader in-depth review than can be provided through the Bulk Reinsurance Statute and, by making that comprehensive review subject to public hearing, also provide a greater degree of protection to the public assets, policyholders, and other Montana stakeholders.

Application of uncoordinated statutes to this carefully designed joint review process will create delay and confusion and give rise to conflicts among the Statutes. For example, under the Bulk Reinsurance Statute, a separate hearing by the Commissioner. Mont. Code Ann. § 33-2-1212 (1). Such an additional hearing does not add to the scope of review provided by the Conversion Statute and will unnecessarily multiply the approval proceedings and their overall cost to judicial resources which is discouraged. *See, e.g., Grenz v. Medical Management Northwest*, 250 Mont. 58, 64, 817 P.2d 1151, 1155.

Similarly, the Bulk Reinsurance Statute requires a vote of approval by the domestic mutual insurer's "members." Mont. Code Ann. § 33-2-1212 (3). BCBSMT-HCSC understand it is CSI's interpretation that BCBSMT's members as defined in its Bylaws – beneficiary, professional, and hospital – are to exercise this authority. Implementation of this provision expressly contravenes BCBSMT's governance structure and authority. As noted above, all BCBSMT corporate governance is vested solely in its Directors. Art. Inc., Exh. 1, art. V, VI; Bylaws, Exh. 2, art. III, sec. 3.1, Exh. 2. Its members have no right to vote and no property interest in the corporation. Art. Inc., art. VI; Bylaws, art. II, sec. 2.1, art. III, sec. 3.1. A member vote here – if adverse – could thwart the whole purpose of the Conversion Statute which notably does not contain a member vote requirement. At the very least, a member vote will delay the Transaction.

Importantly, the Montana Nonprofit Corporation Act also requires a member vote to approve a nonprofit corporation's conversion. Mont. Code Ann. § 35-2-617 (2)(b) (" . . . the proposed transaction to be authorized must be approved . . . by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less . . ."). "Member," however,

means

without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

Mont. Code Ann. § 35-2-114 (21)(a) (emphasis added). For purposes of the member vote, BCBSMT's Directors are the "members," and they already have voted to approve the Transaction. To construe the Bulk Reinsurance Statute to require a vote by BCBSMT's nonvoting members would wrest control of the Transaction from BCBSMT's governing board and from both the Commissioner and Attorney General. Such a construction is not the public policy foundation for the nonprofit corporation conversion law.

BCBSMT-HCSC believe the separate defined areas of inquiry and joint regulatory approval outlined in the Conversion Statute best and most efficiently protect the public assets, policyholders, professional and hospital members, and other Montana stakeholders subject to the Transaction.

**4. Analysis and approval under the Conversion Statute was intended by and is compliant with prior Order.** Review and approval of the Application under the Conversion Statute is consistent and compliant with the Consent Order and Agreement Between the Montana State Auditor and BCBSMT in *In the Matter of the Report of the Examination (I-518) of Blue Cross and Blue Shield of Montana* (Nov. 7, 2005) [Order]. Exh. 3. This Order was entered following the enactment of the Conversion Statute (SB 317) in 2005. The Commissioner of Insurance expressly referenced his oversight and regulatory action with respect to BCBSMT in his public testimony in support of the legislation. Likewise, the Order expressly cites the

legislation as controlling conversion transactions involving health service corporations such as BCBSMT. Order at 2-3. In resolving the matter in dispute, BCBSMT and the Commissioner agreed that it would be the Conversion Statute that would control in a future transaction or conversion. *Id.* 2, ¶ 5. BCBSMT-HCSC have proceeded in this Transaction relying upon and compliant with the express requirement of the Order.

Montana's Conversion Statute and nonprofit law provide the proper basis for BCBSMT to engage in the broad business combination contemplated by its alliance with HCSC and for the Commissioner of Insurance jointly with the Attorney General to review the Transaction thoroughly to ensure the protection of the public assets involved, BCBSMT policyholders, and other stakeholders. No reason exists to apply the Bulk Reinsurance Statute. By its plain language it does not apply. Indeed, to the extent it is applied, the joint regulatory oversight of the provided in the Conversion Statute may be effectively usurped. Such an outcome would compromise the comprehensive protections and judicial economies the Conversion Statute promises and would deny the intended protected interested parties the benefits it is intended to guarantee.

Respectfully submitted this 21<sup>st</sup> day of December, 2012.

KELLER, REYNOLDS, DRAKE,  
JOHNSON & GILLESPIE, P.C.

BY:   
Jacqueline T. Lenmark, Esq.  
50 South East Chance Gulch  
P.O. Box 598  
Helena, Montana 59624

**CERTIFICATE OF SERVICE**

I, Jacqueline T. Lenmark, KELLER, REYNOLDS, DRAKE, JOHNSON & GILLESPIE, P.C., certify that on December 21, 2012, I served a true and correct copy of the foregoing **APPLICANT'S BRIEF IN SUPPORT OF MOTION FOR RULING ON APPLICABILITY OF 33-2-1212, MCA TO APPLICATION**, by mailing it first class postage prepaid to:

Ms. Sybil Shults  
Office of the Commissioner of  
Securities & Insurance  
State Auditor's Office  
840 Helena Avenue  
Helena MT 59601

Honorable W. William Leaphart  
1772 University Avenue  
Helena, MT 59601

Jesse Laslovich, Esq.  
Nick Mazanec, Esq.  
Office of the Commissioner of  
Securities & Insurance  
State Auditor's Office  
840 Helena Avenue  
Helena, MT 59601

James P. Molloy, Esq.  
Kelley Hubbard, Esq.  
Montana Department of Justice  
215 North Sanders, Third Floor  
P.O. Box 201401  
Helena, MT 59620-1401

DATED this 21<sup>st</sup> day of December, 2012.

  
Jacqueline T. Lenmark

Exhibit 1

AMENDED ARTICLES OF INCORPORATION  
OF  
BLUE CROSS AND BLUE SHIELD OF MONTANA  
A MUTUAL BENEFIT CORPORATION

335780

RAV  
P.P. #15-C

\*\*\*\*\*

Pursuant to the provisions of Section 35-2-210 of the Montana Nonprofit Corporation Act, the undersigned corporation adopts the following Restated Articles of Incorporation:

ARTICLE I

The name of this corporation shall be BLUE CROSS AND BLUE SHIELD OF MONTANA, INC.

ARTICLE II

The period of its duration is perpetual.

ARTICLE III

This corporation shall be a non-profit corporation, the purposes of which are:

(1) To establish and operate a non-profit health service corporation with the powers described in Title 33, Chapter 30 of the Montana Code Annotated and other statutes specifically supplementing the same.

(2) To transact any and all other lawful business permitted a non-profit corporation under the laws of the State of Montana, as they may be amended from time to time.

ARTICLE IV

This corporation is not organized for profit, it will not issue any stock, and no part of its assets, income, or earnings shall be distributed to its members, Directors, or officers, except for services actually rendered to the corporation. Upon dissolution, all of the assets of the corporation after payment of its debts shall be transferred and distributed to an organization or

organizations as shall at that time qualify as an exempt organization or organizations under Section 501(c)(4) of the Internal Revenue Code of 1954 as amended.

#### ARTICLE V

The corporate powers of the corporation shall be exercised by its Board of Directors, who shall have the sole voting power on all matters. The number of Directors on the Board shall be fixed by the Bylaws. Regardless of the number of Directors set forth in the Bylaws, the Board shall be composed of at least a majority of Directors who are not employees of or have a financial interest in a health care provider or are members of a profession which provides health care services.

#### ARTICLE VI

The corporation shall have three classes of membership, Beneficiary Members, Professional Members, and Hospital Members. The qualifications of each membership class shall be established by the corporation in its Bylaws. However, in no event, shall any class of members have any voting rights or any property interest in the corporation.

#### ARTICLE VII

The registered office of the corporation is 404 Fuller Avenue, P.O. Box 4309, Helena, MT 59604, and the name of the registered agent at such address is Alan F. Cain.

#### ARTICLE VIII

These amended Articles of Incorporation supersede the heretofore existing Restated Articles of Incorporation of Montana Physicians' Service.

Dated this 5 day of May, 1995.

BLUE CROSS AND BLUE SHIELD OF MONTANA, INC.

BY:

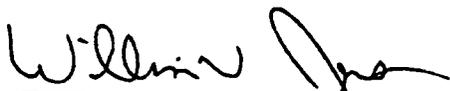


ALAN F. CAIN

President and Chief Executive Officer

(Corporate Seal)

ATTEST:



WILLIAM N. JENSEN Secretary

Exhibit 2

**BYLAWS**  
**Blue Cross and Blue Shield of Montana**

**Adopted**  
**March 24, 1986**

**Amended**  
**December 13, 1986**  
**March 29, 1991**  
**December 6, 1991**  
**July 9, 1993**  
**January 1, 1995**  
**May 5, 1995**  
**May 10, 1996**  
**March 5, 1999**  
**September 10, 1999**  
**January 11, 2002**  
**April 5, 2002**  
**November 7, 2003**  
**January 15, 2004**  
**February 7, 2005**  
**December 7, 2006**  
**March 1, 2007**  
**December 6, 2007**  
**May 14, 2008**  
**September 23, 2009**  
**February 17, 2010**  
**December 1, 2011**

**BYLAWS**  
**of**  
**BLUE CROSS AND BLUE SHIELD OF MONTANA, INC.**  
**A Montana Nonprofit Mutual Benefit Corporation**

**ARTICLE I**

**PURPOSES**

**Section 1.1** This Corporation is organized and shall be operated as non-profit mutual benefit corporation, the purposes of which are:

- (a)** to establish and operate a non-profit health service corporation with the powers described in Title 33, Chapter 30 of the Montana Code Annotated and other statutes specifically supplementing the same; and,
- (b)** to have and exercise all rights and powers conferred on non-profit mutual benefit organizations under the Montana Non-profit Corporation Act, as amended.

**ARTICLE II**

**Membership**

**Section 2.1. Classes of Membership.** There shall be three classes of membership -- beneficiary, professional, and hospital -- none of which shall exercise any voting rights or have any property interest in the Corporation nor shall they have any of the rights of a "Member" as granted under the Montana Nonprofit Corporation Act, as amended.

**Section 2.2 Qualifications for Membership.** The qualifications for the membership classes shall be as follows:

- (a) Beneficiary Members:** To be eligible for beneficiary membership, one must be a member of one of the following classes of members:

(1) Class I Members are members of Blue Cross and Blue Shield of Montana who must:

(A) Submit an application for membership on such forms as shall be prescribed by the Corporation;

(B) Have the application accepted by the Corporation; and,

(C) Pay to the Corporation such dues as may be required by the Corporation.

(2) Class II Members are persons who are Beneficiary Members or subscribers of other Blue Cross and/or Blue Shield Plans who receive services by Professional Members, Hospital Members, or other contracting providers of the Corporation.

(b) Professional Members: To be eligible for professional membership an applicant must:

(1) At the time of application hold a valid and unrevoked license to practice medicine issued by the Montana Board of Medical Examiners;

(2) Submit an application for membership;

(3) Pay to the Corporation such fee as may be required by the Corporation; and,

(4) Meet and maintain credentialing standards established by the Credentialing Committee of the Corporation. In order to assure maintenance of credentialing standards, the Credentialing Committee shall require members to submit applications for recredentialing every two years. All Professional Members must meet the credentialing standards no later than June 1, 2005. For professional membership applications received on or after June 1, 2002, applicants must meet the credentialing standards upon application.

(c) Hospital Members: The Hospital Members of this Corporation shall be hospitals having entered into a contract with the Corporation in accordance with the Montana Code Annotated Section 33-30-101, et seq. and all laws of amendatory and supplementary thereto. As any Hospital Member executes such contract thereafter, it shall automatically become a member of the Corporation and if any Hospital Member contract is cancelled,

either by the hospital or by the Corporation, it shall automatically cease to be a member of the Corporation.

**Section 2.3 Procedure for Admission to Membership.**

**(a) Beneficiary Members:**

(1) Class I Beneficiary Membership shall be obtained through acceptance of an application made by an applicant under such regulations as may be prescribed by the Corporation. Acceptance of such application shall be contingent on payment of dues in the manner and amount prescribed by the Corporation; and,

(2) Class II Beneficiary Membership is granted to persons who receive services by Professional Members, Hospital Members, or other contracting providers of the Corporation. Class II Membership is extended only as to such services rendered and does not thereby include other benefits or obligations granted to Class I Members.

**(b) Professional Members:**

(1) Professional membership shall be obtained through election by the Board of Directors acting upon a regular written application for such membership in one of two forms:

(i) An application for an individual position; or

(ii) An application by a provider group on behalf of all of its practicing members.

(2) Each application shall be accompanied by such fees as shall be prescribed by the Board of Directors.

(3) Each application for professional membership shall be made on the forms provided by the Corporation. Such forms shall indicate that by submission of the application, all individuals who receive professional membership status have accepted and intend to be bound by the Articles of Incorporation, Bylaws, and rules and regulations of this Corporation, together with all future amendments of such Articles or Bylaws or rules and regulations which may be duly adopted pursuant to the provisions thereof.

(4) Upon proper proof that an applicant (or all practitioners who are members of a provider group) for professional membership holds a valid and unrevoked license to practice medicine issued by the Board of Medical Examiners of the state of Montana and meets credentialing standards established by the Credentialing Committee, the Board of Directors shall elect such applicant to professional membership and failure of the Board to take action within a reasonable time shall constitute election of such applicant(s).

(c) Hospital Members: The procedures for admitting Hospital Members shall be those set forth in Article II, Section 2.2(c) above.

**Section 2.4 Duration of Membership.**

(a) Beneficiary Members:

(1) Each Class I Beneficiary Member shall remain as such so long as said member remains under a contract issued by the Corporation.

(2) Each Class II Beneficiary Member shall remain as such for the purposes described in Section 5, after which time membership shall be terminated without notice.

(b) Professional Members:

(1) Each Professional Member shall remain as such until the Member's death, resignation, suspension or expulsion under the provisions of these Bylaws, failure to pay any assessment levied pursuant to the provisions of the Articles of Incorporation or these Bylaws within the time specified by the Board of Directors, failure to maintain credentialing standards as determined by the Credentialing Committee, or suspension or revocation of the Member's physician's and surgeon's certificate by the Board of Medical Examiners of the state of Montana or other competent authority.

(2) In the event the Corporation chooses to contract with a Professional Member who resides and practices outside the state of Montana, upon proper proof that an applicant for professional membership holds a valid and unrevoked license to practice medicine issued by the licensing authority of the state in which

said applicant resides and meets credentialing standards established by the Credentialing Committee, the Board of Directors may elect such applicant to professional membership.

- (c) **Hospital Members:** The duration of Hospital Members shall be as set forth in Article II, Section 2.2(c) above.

**Section 2.5 Privileges of Membership.**

- (a) **Beneficiary Members:**

(1) Class I Beneficiary Members will receive services in accordance with the contract issued by the Corporation.

(2) Class II Beneficiary Members, upon receipt of services from Professional Members, Hospital Members, or other contracting providers with the Corporation, and whose claims are submitted to the Corporation in accordance with provisions contained in the out-of-area program of the Blue Cross and Blue Shield Association, shall receive services described in that program or described in a contract between the Corporation and any other Blue Cross and/or Blue Shield Plan. Membership is granted only for the purpose of providing out-of-area services and terminated upon rendering of said services.

- (b) **Professional Members:** Professional Members shall have the privilege of rendering medical services to Beneficiary Members when chosen to do so by Beneficiary Members and shall have the further privilege of receiving payment for such services from available funds of the Corporation provided that the foregoing privileges are subject to compliance by each Professional Member with the rules and regulations promulgated by the Board of Directors from time to time, the Articles of Incorporation, and these Bylaws.

- (c) **Hospital Members:** The rights, privileges, benefits, and duties of a Hospital Member shall be such as set forth in the Hospital Member contract with the Corporation.

**Section 2.6 Termination of Membership by Suspension or Expulsion.**

- (a) The Board of Directors shall have power by vote of a majority of its members, to suspend or to expel and terminate the membership of any Professional Member for violation of any of the provisions of these Bylaws or the rules and regulations of this

Corporation, or for conduct which, in the opinion of the Board of Directors, is likely to endanger the welfare and interests of the organization. Action by the Board of Directors may be taken at any meeting of the Board provided that written notice of the proposed action has been mailed to the Professional Member, at the Professional Member's last known address at least ten days prior to the meeting and provided that the member is granted full opportunity to be heard at such meeting. The proceedings of the Board of Directors in such matter shall be final and conclusive.

(b) In the event that the Board of Directors seeks to suspend or terminate the membership of a Professional Member who made application prior to June 1, 2002, for conduct which, in the opinion of the Board of Directors, is likely to endanger the welfare and interests of the organization, the Board of Directors may request the Credentialing Committee of the Corporation to investigate such conduct and make recommendations to the Board of Directors.

Section 2.7 Reasonable Compensation for Services Provided by Members. No member of this Corporation shall, by reason of membership herein, be or become entitled at any time to receive any assets, property, income, or earnings from the Corporation. However, professional and hospital members may receive reasonable compensation for medical or surgical services actually rendered to beneficiary members.

Section 2.8 Meetings of Members. The Board shall call such meetings of the membership as it shall deem necessary, upon such reasonable notice as it shall prescribe.

### ARTICLE III

#### BOARD OF DIRECTORS

Section 3.1 Powers. The Board of Directors shall have supervision, control and direction of the affairs of the Corporation, shall actively promote and pursue the Corporation's objectives, shall supervise the disbursement of the Corporation's funds, and shall exercise all corporate powers for this Corporation.

**Section 3.2 Number of Directors.** The number of Directors shall be no less than eleven (11) and no more than nineteen (19).

**Section 3.3 Composition of the Board.** The Board of Directors shall:

- (a) be composed of at least a majority of Directors who are not employees of or have a financial interest in a health care provider or are not members of a profession which provides health care services;
- (b) be composed of Directors who meet the participation requirements as set forth by the BCBSA Guidelines to Administer Membership Standards;
- (c) be composed of at least a majority of Directors who are "independent" as approved and adopted by the Board of Directors; and,
- (d) include at least one Director who meets the definition of "financial expert" as approved and adopted by the Board of Directors.

Directors may include persons who are associated with member hospitals and physicians who are professional members.

**Section 3.4 Chairperson of the Board of Directors.** The Chairperson shall be elected by the Board of Directors on an annual basis and may be the Chief Executive Officer of the Corporation. The Chairperson may sign, with the Secretary or any other proper officer of the Corporation that the Board has authorized, Corporation deeds, mortgages, bonds, contracts, or other Board authorized instruments. The Chairperson shall preside over all meetings of Directors.

**Section 3.5 Lead Director of the Board of Directors.** If the Chairperson of the Board is the Chief Executive Officer of the Corporation, the Chairperson of the Governance and Nominating Committee shall serve as the Lead Director of the Board. If the Chairperson of the Board of Directors is other than the Chief Executive Officer of the Corporation, there shall be no Lead Director.

In the absence or disability of the Chairperson of the Board, the Lead Director shall perform all the duties of the Chairperson and when so acting shall have all the power of, and be subject to, all the instructions upon the Chairperson.

**Section 3.6 Election of Directors.** At the last regular meeting of the Board each calendar year, the Board shall nominate and elect Directors for any expiring Directorships, as deemed necessary by the Board.

**Section 3.7 Terms and Tenure.**

(a) Except as otherwise provided herein under subsection (d), all Directors, with the exception of those filling unexpired terms of Directors, shall be elected for a term of three (3) years and the Director's term shall expire at the last regular meeting of the third full year of the Director's term. The Board of Directors may however, in its sole discretion, reelect a Director for a term of less than three (3) years.

(b) A Director shall be ineligible for reelection if the Director has attained seventy (70) years of age. However, under certain extenuating business circumstances and if in the determination of the Board, it is in the best interest of the Corporation, a Director who has attained seventy (70) years of age may, at the sole discretion of the Board, serve one or more additional one (1) year term(s).

(c) The Chief Executive Officer of this Corporation shall, while remaining in the office of Chief Executive Officer, serve as a Director. However, the Chief Executive Officer shall not be subject to the terms of subsections (a) and (b) of this Section.

(d) There may be one Board seat specifically designated for a member in good standing in the Montana Medical Association. Any person elected to fill the Montana Medical Association seat ("MMA seat") on the Board may serve up to two (2) three (3) year terms at the sole discretion of the Board. If the Montana Medical Association Director changes, or retires from, his/her occupation or is no longer an active member in the Montana Medical Association, such Director shall automatically and immediately forfeit his/her MMA seat on the Board of Directors. If the MMA seat is vacated for any reason before the end of the then in effect term, the Board of Directors reserves the right to elect a successor from the Montana Medical Association to complete the remainder of the current term.

**Section 3.8 Removal.** Any Director, with the exception of the Chief Executive Officer, may be removed from office as such by the affirmative vote of two-thirds of the Directors at any regular or special meeting of the Board on written notice, setting forth the reasons and grounds

therefore, mailed to such Director's last known address at least seven (7) days prior to the date of such meeting.

Section 3.9 Fees and Compensation. Directors, with the exception of the Chief Executive Officer, shall receive compensation for their services as Directors. Directors' compensation and an allowance for the expenses of attendance at each meeting shall be established by Resolution of the Board. Nothing contained in this Section shall preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving a reasonable compensation therefore.

Section 3.10 Attendance at Meetings. It shall be the duty of the Director to attend meetings of the Board on a regular and consistent basis unless excused by the Chairperson. A Director who, without good cause, fails to attend two consecutive Board meetings is subject to removal from office.

Section 3.11 Vacancies. Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director.

Section 3.12 Resignation. A Director may resign at any time by delivering notice to the Board of Directors or the Chairperson. Unless the notice specifies a later effective date, a resignation is effective when the notice is presented.

Section 3.13 Regular Meetings. The Board of Directors may provide by notice dates and locations for the regular meetings of the Board of Directors; provided, however, that the Board of Directors shall meet no less frequently than three times per calendar year. The Board will also hold an educational meeting each year, which may be held in conjunction with a regular meeting.

Section 3.14 Special Meetings. Special meetings of the Directors may be called at any time by the Chairperson or Lead Director or any four (4) Directors.

Section 3.15 Place of Meeting. Regular and Special meetings shall be held at the principal office of the Corporation unless otherwise designated.

Section 3.16 Meetings by Conference Telephone. The Board may permit any or all Directors to participate in a meeting of the Board by, or conduct the meeting through, the use of conference telephone or any means of communication by which persons participating in the meeting may hear each other simultaneously during the meeting. A Director participating in the

meeting by conference telephone is deemed present in person at the meeting. The Chairperson of the meeting may establish reasonable rules as to conducting the meeting by telephone.

**Section 3.17 Notice of Board of Director's Meetings.**

(a) **Notice.** Except as otherwise required by the Montana Nonprofit Corporation Act or these Bylaws, regular meetings may be held without notice and special meetings must be preceded by at least two (2) days notice of the date, time and place, but not necessarily the purpose, of the meeting. Regardless of whether the meeting is a regular meeting or a special meeting, if a purpose of the meeting is to consider: (1) an amendment to the Articles of Incorporation or Bylaws; (2) a plan of merger; (3) the sale, lease, exchange, or disposition of all, or substantially all of the Corporation property; or (4) the dissolution of the Corporation, then a notice must be given to each Director at least seven (7) days before the meeting stating the purpose and the notice must be accompanied by a copy or summary, if applicable, of the proposed amendment to the Articles of Incorporation or Bylaws, the proposed plan of merger, the transaction to dispose of the Corporation's property, or proposed plan of dissolution.

(b) **Effective Date.** If mailed, notice of any meeting shall be deemed to be effective at the earlier of: (1) five (5) days after deposited in the United States Mail, addressed to the Director's business address with postage pre-paid; (2) the date shown on the return receipt (if sent by registered or certified mail, return receipt requested, and the receipt is signed by on behalf of the Director; or (3) the date when received.

(c) **Waiver of Notice.** Any Director may waive notice of any meeting. The waiver must be in writing, signed by the Director entitled to the notice, and filed with the minutes or corporate records. A Director's attendance at a meeting waives the Director's right to object to lack of notice or defective notice of the meeting unless the Director, at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting, and does not vote for or assent to action taken at the meeting.

**Section 3.18 Quorum.** A quorum of the Board of Directors consists of a majority of the Directors in office immediately before a meeting begins.

Section 3.19 Voting. If a quorum is present when a vote is taken the affirmative vote of a majority of Directors present is the act of the Board of Directors, unless the Montana Nonprofit Corporation Act, Articles of Incorporation, or these Bylaws require the vote of a greater number of Directors.

Section 3.20 Actions Without Meeting. Any action required or permitted to be taken at a meeting of Directors may be taken without a meeting, so long as the action taken is evidenced in writing and consented to and signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote.

Section 3.21 Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the Director's dissent shall be entered in the minutes of the meeting or unless a written dissent to such action is filed with the person acting as the secretary of the meeting before the adjournment thereof, or unless such dissent is forwarded by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a Director who voted in favor of such action.

Section 3.22 Loans , Credit or Guaranties for Directors. The Corporation shall not lend money to, extend, maintain or arrange credit for, or guaranty the obligation of a Director of the Corporation.

#### ARTICLE IV

##### COMMITTEES OF THE BOARD

Section 4.1 Creation of Standing Committees. The Board of Directors shall create the following standing committees and appoint members to serve on such committees on an annual basis: (a) Governance and Nominating Committee; (b) an Audit Committee; (c) a Compensation Committee; and (d) a Finance Committee and appoint members of the Board to serve on each committee. The Board of Directors may from time to time create other standing committees, appoint the members thereof, and vest therein such powers and duties as it may deem desirable.

Each standing committee shall have a Board approved charter that shall outline its purpose, membership and meeting requirements, key responsibilities and duties, and authority.

Section 4.2 Special Committees. The Board of Directors may from time to time create special committees, appoint the members thereof, and vest therein such powers and duties as it may deem desirable.

Section 4.3 Selection of Members. To create a committee and appoint members to said committee, the Board must require approval by a majority of all of the Directors in office when the action is taken.

Section 4.4 Required Procedures. The sections of these Bylaws governing meetings, notice and waiver of notice, quorum and voting requirements, conduct of the Board of Directors, and action without meetings apply to committees and their members. In addition, the committees shall keep regular minutes of their proceedings and report the same to the Board of Directors. The committees are subject to all of the procedural rules governing the operation of the Board itself.

Section 4.5 Authority. Each committee may exercise the specific board authority which the Board of Directors confers upon the committee in the resolution creating the committee and its charter; provided, however, a committee shall not: (a) authorize distributions; (b) approve or recommend dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the Corporation's assets; (c) elect, appoint, or remove Directors or fill vacancies on the Board or on any of its committees; or (d) adopt, amend, or repeal the Articles of Incorporation or Bylaws.

## ARTICLE V

### OFFICERS

Section 5.1 Number and Qualifications of Officers. The officers of the Corporation shall be a Chief Executive Officer, a President (at the discretion of the Board, the offices of Chief Executive Officer and President may be combined into a single office), any individual appointed by the Board as an officer of the Corporation, a Secretary, and a Treasurer. The Board of Directors may elect and appoint other officers and assistant officers if the Board deems it necessary or desirable to do so. If the Board of Directors specifically authorizes an officer to appoint one or more officers or

assistant officers, the officer may do so. The same individual may simultaneously hold more than one office in the Corporation.

Section 5.2 Election and Term of Office. The Board of Directors shall elect and appoint officers of the Corporation for a one-year term. Each officer shall hold office until a successor is duly elected and qualified or until he or she resigns, dies or is removed in a manner provided in Section 5.3. A designation of a specified term does not grant to the officer any contract rights, and the Board can remove the officer at any time prior to the designated term.

Section 5.3 Removal of Officers. The Board of Directors may remove any officer or agent at any time, with or without cause. The removal shall be without prejudice to the contract rights, if any, of the person removed. The election or appointment of an officer or agent by the Board of Directors shall not of itself create contract rights.

Section 5.4 Vacancies. If the office of any officer becomes vacant by reason of death, resignation, removal, or otherwise, the Board of Directors shall elect a successor who shall hold office for the unexpired term.

Section 5.5 President; Chief Executive Officer. The President may also be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and offices of the Corporation. The President shall have the general powers and duties of management usually vested in the office of the President of a corporation and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5.6 Appointed Officers. Each individual appointed by the Board of Directors as an officer of the corporation shall have such powers and discharge such duties as each appointed officer may be assigned.

Section 5.7 Secretary. The Secretary shall keep or cause to be kept a book of minutes at the principal office of the Corporation of all meetings of Directors and members – professional, hospital, or beneficiary – with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the name of those present at any meetings of any class of membership and the proceedings thereof.

The Secretary shall give or cause to be given notice of all meetings of members and of the Board of Directors required by these Bylaws or by law to be given, and the Secretary shall keep the seal of the Corporation in safe custody and shall have such powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 5.8 Treasurer. The Treasurer shall keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its funds (both general and special), assets, liabilities, receipts, disbursements, reserves, gains, and losses in accordance with generally accepted accounting principles.

The Treasurer shall deposit all moneys and other valuables to the name and to the credit of the Corporation with such depositaries as may be designated by the Board of Directors. The Treasurer shall dispose of the funds of the Corporation as may be ordered by the Board of Directors, shall render to the Chief Executive Officer, President and/or Directors, whenever they request it, an account of all of the transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors and these Bylaws.

Section 5.9 Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, in general, shall perform the duties that the Secretary or Treasurer respectively, or the Board or Chairperson may assign to them. The Assistant Treasurers shall, if required by the Board, give bonds for the faithful performance of their duties and as insurance against the misappropriation of funds; the bonds shall be in sums and with the sureties that the Board of Directors shall determine.

Section 5.10 Loans , Credit or Guaranties for Officers. The Corporation shall not lend money to, extend, maintain or arrange credit for, or guaranty the obligation of an officer of the Corporation.

## ARTICLE VI

### MEDICAL DIRECTOR AND ASSISTANT MEDICAL DIRECTOR

Section 6.1 Qualifications of Medical Director and Assistant Medical Directors. The Board of Directors may authorize the employment of a Medical Director and such Assistant Medical Directors as it may deem necessary. Such Medical Director and Assistant Medical Directors shall be physicians who are duly licensed to practice medicine.

## ARTICLE VII

### MISCELLANEOUS

Section 7.1 Registered Office. The registered office of the Corporation required by the Montana Nonprofit Corporation Act to be maintained in the state of Montana, may be, but need not be, identical with the principle office in the state of Montana, and the address of the registered office and registered agent may be changed from time to time by the Board of Directors.

Section 7.2 Books and Records. The Corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of the Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any Director, or his or her attorney, for any purpose, at any reasonable time at the principle office of the Corporation.

Section 7.3 Fiscal Year. The fiscal year shall begin on the first day of January and end on the last day of December of each year, unless otherwise established by the Board.

Section 7.4 Amending Bylaws. The Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors, subject to the provisions of the current Bylaws, at any regular or special meeting of the Board of Directors. Notice of such meeting must be given in accordance with these Bylaws and the notice must also state the purpose or one of the purposes is to consider a proposed amendment to the Bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

## ARTICLE VIII

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 8.1 Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute or deliver any instruments in the name of and on behalf of the Corporation and such authorization may be general or confined to specific instruments.

Section 8.2 Loans. The Corporation shall not allow anyone to contract on behalf of it for indebtedness or borrow money unless the Board of Directors authorizes such a contract by resolution. The Corporation shall not allow anyone to issue evidence of the Corporation's indebtedness unless the Board of Directors authorizes the issuance by resolution. The authorization may be general or specific.

Section 8.3 Checks, Drafts, etc. The Board of Directors shall authorize by resolution which officers or agents may sign and issue all corporation checks, drafts or other orders for payment of money and notes or other evidence of indebtedness. The Board of Directors shall also determine by resolution the manner in which these documents will be signed and issued.

Section 8.4 Deposits. The Treasurer of the Corporation shall deposit all funds of the Corporation, that are not being used, in banks and other depositories; the Board of Directors shall authorize by Board resolution the exact location of the bank and depositories.

## ARTICLE IX

### INDEMNIFICATION AND ADVANCE FOR EXPENSES

Section 9.1 Mandatory Indemnification. The Corporation shall indemnify a Director or former Director, who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a Director of the Corporation against reasonable expenses incurred by him or her in connection with the proceedings.

Section 9.2 Permissible Indemnification. The Corporation shall indemnify a Director or former Director made a party to a proceeding because he or she is or was a Director of the

Corporation, against liability incurred in the proceeding, if determination to indemnify him or her has been made in the manner prescribed by the Act and payment has been authorized in the manner prescribed by the Act.

Section 9.3 Advance for Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of (a) a written affirmation from the Director, officer, employee or agent of his or her good faith belief that he or she is entitled to indemnification as authorized in this Article, and (b) an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation authorized in this Article.

Section 9.4 Indemnification of Officers, Agents and Employees. An officer of the Corporation who is not a Director is entitled to mandatory indemnification under this Article to the same extent as a Director. The Corporation may also indemnify and advance expenses to an officer, employee or agent of the Corporation who is not a Director to the same extent as a Director or to any extent, consistent with the Act and public policy, that may be provided by the general or specific action of the Board or by contract.

Section 9.5 Insurance. The Corporation may purchase and maintain insurance (a) to insure itself with respect to the indemnification payments it is authorized or obligated to make pursuant to this Article, and (b) on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise to insure against any liability asserted against that person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify the person against such liability under the provisions of this Article.

ARTICLE X  
DISSOLUTION

Section 10.1 Distribution of Assets on Liquidation. In the event of the dissolution of this Corporation, all of the assets and property, after payment and satisfaction and discharge of all claims and demands against and liabilities of the Corporation, shall be distributed as now or hereafter provided the Articles of Incorporation.

CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned hereby certifies that the above and foregoing amended and restated Bylaws of the Blue Cross and Blue Shield of Montana were duly adopted and constitute the Bylaws of the Corporation.

DATED this 1<sup>st</sup> day of December, 2011.



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MARY BELCHER  
Its: Corporate Secretary

M:\LEGEXE\LEGAL\EXLGL\BCBSMT\Bylaws (and BCBSA Std 2 updates)\2011\DEC 2011 bylaws FINAL(re majority vs 2-3 Independent).docx

Exhibit 3

MONTANA INSURANCE DEPARTMENT  
STATE OF MONTANA  
HELENA, MONTANA

2005 NOV -4 A 10:43

IN THE MATTER OF THE REPORT  
OF THE EXAMINATION (I-518)  
OF BLUE CROSS AND BLUE SHIELD  
OF MONTANA

**CONSENT ORDER AND AGREEMENT  
BETWEEN THE MONTANA STATE AUDITOR AND  
BLUE CROSS AND BLUE SHIELD OF MONTANA**

This Consent Order and Agreement is entered into by Blue Cross and Blue Shield of Montana, Inc., a Montana nonprofit health service corporation, with principal office at 560 N. Park Avenue, Helena, Montana ("BCBSMT") (Respondent) and the Montana State Auditor, in his role as the Insurance Commissioner for the State of Montana ("Commissioner").

**WHEREAS**, BCBSMT is a licensed health service corporation under Title 33, Chapter 30 of the MCA and is subject to examination under § 33-30-105;

**WHEREAS**, The Commissioner conducted an examination of the financial condition of BCBSMT and prepared a Report of the Examination, as of December 31, 2000, dated March 31, 2003 ("the Report");

**WHEREAS**, The Report determined that on March 8, 1995 BCBSMT filed its annual report with the Secretary of State of Montana designating itself as a public benefit nonprofit corporation under § 35-2-126(1)(b) MCA;

**WHEREAS**, The Report determined that on May 5, 1995 BCBSMT amended its articles of incorporation purporting to redesignate itself as a mutual benefit nonprofit corporation under Section 35-2-126(1)(a). The amended articles were filed with the Secretary of State on July 14, 1995;

**WHEREAS**, The Report concluded BCBSMT is a public benefit corporation under Montana law and recommended that BCBSMT amend its articles of incorporation to change its corporate designation to a public benefit corporation;

**WHEREAS**, In its response to the recommendation of the Report to amend its articles of incorporation, BCBSMT disagreed with the finding that BCBSMT is a public

benefit nonprofit corporation and rejected the recommendation to amend its articles of incorporation and/or bylaws;

**WHEREAS**, In the Findings of Fact, Conclusions of Law and Order Adopting Examination Report No. I-518, dated August 28, 2003, ("The Examination Report Order") the Commissioner concluded as a matter of law and fact that BCBSMT's revision of its election as a public benefit corporation on May 5, 1995, that purported to designate it as a mutual benefit corporation, had no legal effect. The Commissioner found that BCBSMT failed to comply with the statutory provisions governing the disposition of assets upon dissolution of a public benefit corporation in Title 35, Chapter 2 of the MCA, and that BCBSMT remains a public benefit nonprofit health service corporation;

**WHEREAS**, BCBSMT contends that the designation of BCBSMT as a public benefit nonprofit corporation in the March 8, 1995 annual report filed with the Secretary of State of Montana was an error and had no legal effect upon its prior and continuing status as a mutual benefit nonprofit corporation;

**WHEREAS**, BCBSMT filed a request for hearing from the Examination Report Order on September 29, 2003 on the grounds that BCBSMT claims it is a mutual benefit nonprofit corporation, not a public benefit nonprofit corporation under the Montana Nonprofit Corporation Act and waived its right to a hearing within 30 days;

**WHEREAS**, BCBSMT and the Commissioner desire to resolve the dispute raised by the Report in a manner that protects the interest of the citizens of the state of Montana, and the policyholders, subscribers and insureds of BCBSMT and its affiliates and subsidiaries;

**WHEREAS**, Senate Bill 317, "An Act Regulating the Conversion of a Nonprofit Health Entity to a For-profit Corporation or Entity or a Mutual Benefit Corporation or Entity", was signed into law and made effective on April 8, 2005 as 2005 Montana Laws, c. 214, to be codified in Montana Code Annotated, Title 50, Chapter 4 (2005) and Senate Bill 317 applies to nonprofit health service corporations without regard to whether the health service corporation is designated as a mutual benefit or public benefit corporation;

**THEREFORE**, the parties agree and it is hereby **ORDERED** by the Commissioner, with the consent and agreement of BCBSMT, that:

1. For purposes of this Consent Order, the following definitions shall apply:
  - (a) "Commissioner" means the Montana State Auditor in his role as Insurance Commissioner for the State of Montana.
  - (b) "Conversion or Conversion Transaction" has the meaning in 2005 Montana Laws, c.214, sec.1(3), codified in 50-4-701 MCA (2005).

(c) "The Act" means Senate Bill 317, Ch. 214, L. 2005, codified in Title 50, Chapter 4, MCA, 2005.

2. In resolving the dispute between the parties regarding the Examination Report Order, the Commissioner will not require BCBSMT to immediately amend its articles of incorporation to be designated as a public benefit corporation. The Commissioner makes no finding at this time concerning whether or not the purported election of May 5, 1995 by BCBSMT to redesignate itself a mutual benefit nonprofit health services corporation was valid or has legal effect.

3. By entering into this Consent Order, BCBSMT does not concede, imply or agree that it is a public benefit corporation or that it may be treated as a public benefit corporation for any purpose, except as specifically agreed to in paragraph 5 below. In the event that the Commissioner seeks at any future date to require BCBSMT to amend its articles of incorporation or take any other action to designate itself as a public benefit corporation, the Commissioner agrees to provide BCBSMT with written notice and opportunity for hearing with respect to such order.

4. The parties hereby reserve all arguments, rights, claims and defenses that they may have with respect to BCBSMT's status as a mutual benefit or public benefit corporation, except insofar as may be inconsistent with the provisions of paragraph 5, below.

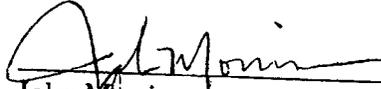
5. The parties agree that in the event BCBSMT engages in or proposes to engage in any Conversion Transaction, the Act shall apply to such Conversion Transaction as though BCBSMT is a Montana public benefit corporation with respect to the assets involved in the Conversion, provided, however, that such treatment of BCBSMT as a public benefit corporation with respect to the assets involved in the conversion transaction shall not extend to any assets not involved in the Conversion Transaction; and further provided that BCBSMT may not be required by the Commissioner, solely by virtue of having proposed or engaged in such Conversion Transaction, to amend its articles of incorporation or its bylaws or to take any other action to designate itself as a public benefit corporation.

6. BCBSMT warrants that the person executing this Consent Order on its behalf does so with the full and informed permission of BCBSMT's management and that such person is legally authorized by its board of directors to bind BCBSMT and BCBSMT's successor entities and assigns, to the terms of this Consent Order. BCBSMT will secure a resolution of its Board of Directors authorizing the execution of this Consent Order, which resolution will be duly entered on the records of the corporation and a copy of which will be provided to the Commissioner.

7. The parties acknowledge that this Consent Order represents a settlement of disputed legal claims, and that the resolution of the dispute over those claims provides adequate consideration for the mutual promises and obligations contained herein.

7. This Consent Order constitutes the entire agreement between the parties. It is binding on any successors or assigns of BCBSMT and its provisions may be exercised by the current Commissioner, his successors in office, or any other state official that may, due to changes in state law, succeed to the current powers and duties of the Commissioner regarding a Conversion Transaction.

11/7, 2005  
Date

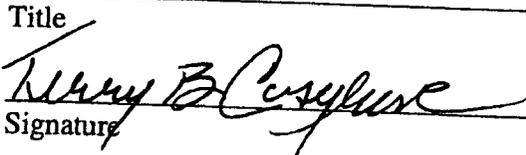
  
\_\_\_\_\_  
John Morrison  
Montana State Auditor and  
Insurance Commissioner

**Respondent's Consent:**

Respondent hereby consents to the above ORDER:

Terry B. Cosgrove  
Name

Executive Vice President and General Counsel  
Title

  
Signature

November 3, 2005  
Date