

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
MEASURABLE COST SAVINGS)
DETERMINED BY DIRIGO)
HEALTH FOR THE FOURTH)
ASSESSMENT YEAR)
DOCKET NO. INS-08-900)

FILING COVER SHEET

TO: Mila Kofman, Superintendent
Attn: Vanessa J. Leon, Docket No. INS-08-900
Maine Bureau of Insurance
34 State House Station
Augusta, ME 04333-0053

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PARTY: Maine Automobile Dealers Association Insurance Trust

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Insurance Trust to Recuse Superintendent Kofman

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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
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IN RE: REVIEW OF AGGREGATE)	
MEASURABLE COST SAVINGS)	MOTION OF THE MAINE
DETERMINED BY DIRIGO)	AUTOMOBILE DEALERS
HEALTH FOR THE FOURTH)	ASSOCIATION INSURANCE
ASSESSMENT YEAR)	TRUST TO RECUSE
)	SUPERINTENDENT KOFMAN
DOCKET NO. INS-08-900)	

NOW COMES the Maine Automobile Dealers Association Insurance Trust (the “Trust”), by and through its undersigned counsel, and, pursuant to 5 M.R.S.A. § 9063(1), moves for the recusal of Superintendent Mila Kofman in this matter.

I. ARGUMENT

Pursuant to 24-A M.R.S.A. § 6913(1)(A)(B), the Dirigo Health Agency’s Board of Directors (the “DHA Board”) filed its determination of aggregate measurable cost savings (“AMCS”) for the Fourth Assessment Year on August 12, 2008. As has been the case since the inception of Dirigo Health, it now falls to the Superintendent to determine whether the AMCS amount claimed by the DHA Board is reasonably supported by the evidence. See 24-A M.R.S.A. § 6913(1)(C). Here, Superintendent Kofman’s participation in a substantive review of the DHA Board’s AMCS determination would be wholly inappropriate, and accordingly, she should be recused from participating further in this matter.

As it has for each of the prior three Assessment Years, Consumers for Affordable Health Care (“CAHC”) has participated as an intervenor in the proceedings regarding the DHA Board’s AMCS determination, both before the DHA Board and before the Superintendent. During that time, CAHC has been an unwavering and ardent supporter of both (1) the methodologies used by the Dirigo Health Agency (the “Agency”) in its proposed AMCS calculations each year and (2)

the AMCS amounts determined by the DHA Board. CAHC has “strategized” with the Agency and Steven Schramm, the Agency’s expert witness. Indeed, Mr. Schramm testified during the hearing before the DHA Board for the Third Assessment Year that he even helped CAHC’s attorney prepare his “cross-examination” of him. See Docket No. INS-07-90, Administrative Record at 426.

Superintendent Kofman’s past relationship with CAHC demonstrates a bias in favor of CAHC and thus the Agency and the DHA Board:

1. Superintendent Kofman served on CAHC’s Board of Directors “Spring 2006 to present,” a fact disclosed on page 12 of her *Curriculum Vitae* and on page 2 of her Legislative Staff Questionnaire dated January 12, 2008.¹ Thus, Superintendent Kofman was a member of CAHC’s Board of Directors, the body statutorily vested with responsibility for the organization’s management, see 13-B M.R.S.A. § 701, during the time CAHC was participating (and strategizing with the Agency) in the AMCS proceedings for the Second and Third Assessment Years, and during the pendency of litigation regarding the AMCS determination in the First Assessment Year.

2. According to statements of CAHC’s executive director appearing in a January 26, 2008 *Bangor Daily News* article regarding her appointment, Superintendent Kofman testified before the Maine Legislature in 2005 on a health coverage policy initiative on CAHC’s behalf.² Superintendent Kofman’s testimony is confirmed at pages 4 and 7 of her *Curriculum Vitae*.

3. In November 2006, Superintendent Kofman made a presentation at CAHC’s “Annual Strategic Policy Planning Retreat” identified on page 4 of her *Curriculum Vitae* as “Winds of Change: Annual Strategic Policy Planning Retreat, Maine Consumers for Affordable Health Care Coalition (‘Report from the Front: Battles with the Insurance Industry; Analysis of National Trends in the Private Health Insurance Market’ November 2006).”

In addition to her past relationship with CAHC, other facts suggest that Superintendent Kofman is predisposed in favor of the DHA Board’s AMCS determination. For example, in the *Bangor Daily News* article noted above, the author identifies Superintendent Kofman as “a supporter of [Governor] Baldacci’s Dirigo health reforms and of the DirigoChoice insurance

¹ Copies of Superintendent Kofman’s *Curriculum Vitae* and Legislative Staff Questionnaire are attached as Exhibits A and B.

² A copy of the *Bangor Daily News* article is attached as Exhibit C.

program in particular,” and identifies CAHC’s executive director as the source for the statement. Indeed, in August 2006, Superintendent Kofman briefed Governor Baldacci on “Dirigo, state and federal proposals and their impact on Dirigo, and future expansion efforts.” See Curriculum Vitae at 4.

Under 5 M.R.S.A. § 9063(1), a presiding officer is obligated to recuse herself when biased or financially interested in the matter under review. The Trust respectfully submits that based on the above facts, this standard has been far surpassed in the case of Superintendent Kofman. Moreover, Superintendent Kofman’s recusal will not leave the Bureau of Insurance without the means of carrying out its statutory mandate since a more than capable substitute for Superintendent Kofman exists in the person of Assistant Superintendent Eric A. Cioppa, who, as Acting Superintendent last September, filled this very role for the Third Assessment Year.

II. CONCLUSION

For all of the foregoing reasons, Maine Automobile Dealers Association Insurance Trust’s motion to recuse should be granted and Superintendent Kofman should be recused from further participation in this proceeding.

Dated: August 15, 2008

Respectfully submitted,

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