

April 9, 2014

Judge Ruth Astle
Judge Jill Schlichtmann
Office of Administrative Hearings
1515 Clay Street, Suite 206
Oakland, CA 94612

VIA FACSIMILE (510-622-2743) & EMAIL (oakfilings@dgs.ca.gov)

RE: CASE NO. 2013110565 – KAISER FOUNDATION HEALTH PLAN & DEPARTMENT OF MANAGED HEALTH CARE

Honorable Judges Astle and Schlichtmann:

On behalf of the National Union of Healthcare Workers (“NUHW”), I write to express our strong opposition to a motion filed by Kaiser Foundation Health Plan (“Kaiser”) that seeks to seal from the public’s view the proceedings of an upcoming administrative hearing scheduled to begin on May 12, 2014. We understand that you will issue a ruling on Kaiser’s motion during a Pre-Hearing Conference scheduled for April 11, 2014 in Oakland, California.

NUHW’s members include 2,500 psychologists, licensed clinical social workers, marriage and family therapists, psychiatric social workers and other therapists who provide mental health services to Kaiser's members in more than 100 clinics, emergency rooms, hospitals and other sites across California. In November of 2011, NUHW filed a complaint with the Department of Managed Health Care (“DMHC”) that prompted that agency’s investigation into Kaiser’s mental health services and its eventual \$4 million fine against the HMO, which is the subject of the upcoming hearing. During the course of the DMHC’s investigation, NUHW provided a variety of documents and correspondence to the DMHC regarding Kaiser’s substandard care, which presumably will make up a portion of the evidence during the upcoming hearing.

Administrative hearings are presumed to be open to the public in furtherance of the public's First Amendment rights. With respect to this case, the Office of Administrative Hearings has an even greater duty to protect this public right. Kaiser provides health services to more than 7 million Californians and is by far our state's largest HMO. Last year, after a lengthy investigation, our state's primary consumer-protection agency – the DMHC – cited Kaiser for committing "serious" violations of state law by illegally delaying patients' access to mental health services and violating the California Mental Health Parity Act, among other violations. In June of 2013, the

DMHC issued a "Cease and Desist Order" and levied a \$4 million fine against Kaiser due to the severity of Kaiser's violations. This fine is the second largest in the DMHC's history.

These circumstances alone should be sufficient to ensure the public's right to attend the upcoming hearing. Other factors, however, offer further grounds for safeguarding the public's rights.

The Fair Political Practices Commission ("FPPC") is currently conducting an investigation into alleged misconduct by the DMHC attorney who headed the agency's investigation into Kaiser's mental health violations. During the course of the DMHC's investigation, this attorney – Ms. Marcy Gallagher – resigned her position at the DMHC and began working for Kaiser in the precise department that's responsible for handling the DMHC's investigation. Ms. Gallagher allegedly used her insider knowledge from the DMHC to aid and assist Kaiser in this case. The FPPC, after completing the first phase of its investigation into Ms. Gallagher's alleged misconduct, has referred the matter to a team of attorneys for a complete investigation and final determination.¹

These circumstances raise obvious concerns about the integrity of our government's institutions. Such concerns are arguably weightier because the government agency in question is charged with protecting Californians' rights to essential health services. Consequently, the Office of Administrative Hearings has an even greater duty to ensure the transparency of the upcoming hearing.

Finally, it's important to note that procedures already exist by which Kaiser can seek to protect trade secrets or privileged information. Kaiser, however, must do so on a narrow, particularized, document-by-document basis. Kaiser's effort to obtain a blanket protective order is entirely unwarranted and would harm the interests of the public, who deserve a seat in the hearing room in order to observe the full functioning of our government's institutions and laws.

Sincerely,



Sal Rosselli, President

¹ FPPC File No. 13/945 Marcella Faye Gallagher.