

**Federal Trade Commission and U.S. Department of Justice  
Hearings on Health Care and Competition Law and Policy**

February 25, 2003

Submitted on behalf of:

Mrs. Elissa Schoenlank – consumer-patient/insured  
199 Mirror Lake Drive  
Lake Placid, New York 12946

By: Richard B. Kelly, Attorney-at-Law  
1 Riverside Drive  
Lake Placid, New York 12946  
(518) 523-1133

Re: Advertising and promotional practices of  
BlueCross/ Blue Shield of Utica Watertown  
an Excellus Company ( “BC/BS UW” )  
344 South Warren Street  
Syracuse, New York 13221

**The Complaint:**

Elissa Schoenlank (“the insured patient”) purchased a traditional medical insurance “indemnity” plan from BC/BS UW. She is a cancer patient. BC/BS UW refuses to pay approximately seventy three percent (73%) of her doctor bills. BC/BS UW uses promotional material that we believe tends to falsely lead the public to believe that reasonable medical bills will be paid.

We believe that this case is directly relevant to the current hearings. Promotional material is being used to induce residents of northeastern New York to purchase medical insurance based upon what we view as false representations and material omissions that divert business from other medical insurers. The result is the failure to pay the patients' doctor bills when they are most vulnerable and least able to pursue their rights despite the fact that such conduct seems to clearly constitute deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act, as well as New York General Business Law Sections 349 and 350 (which is applicable to medical insurance policies.)

The Facts:

A promotional pamphlet is issued by BC/BS UW entitled "YOU CAN COUNT ON US" (attached as Exhibit A) which is distributed widely throughout Lake Placid and the Adirondack region of New York. It tells the insured:

"Our Promise: More Choices. Low Worry. Helping You Achieve the Best possible Health Traditional Coverage...

Comprehensive coverage with little paperwork. Because we understand... the comprehensive plan has been designed to give you more freedom to choose the doctor you know and trust with the largest network of providers locally and worldwide throughout our BlueCard program."

(At top of the next page in bold type:)

**"COMPREHENSIVE COVERAGE ADVANTAGES**

Choosing A Participating physician

**Under this plan you may choose any physician you prefer, but selecting a participating physician can save you money, time and paperwork.**" ( the most relevant portion has been underlined in bold letters for emphasis —ed.)

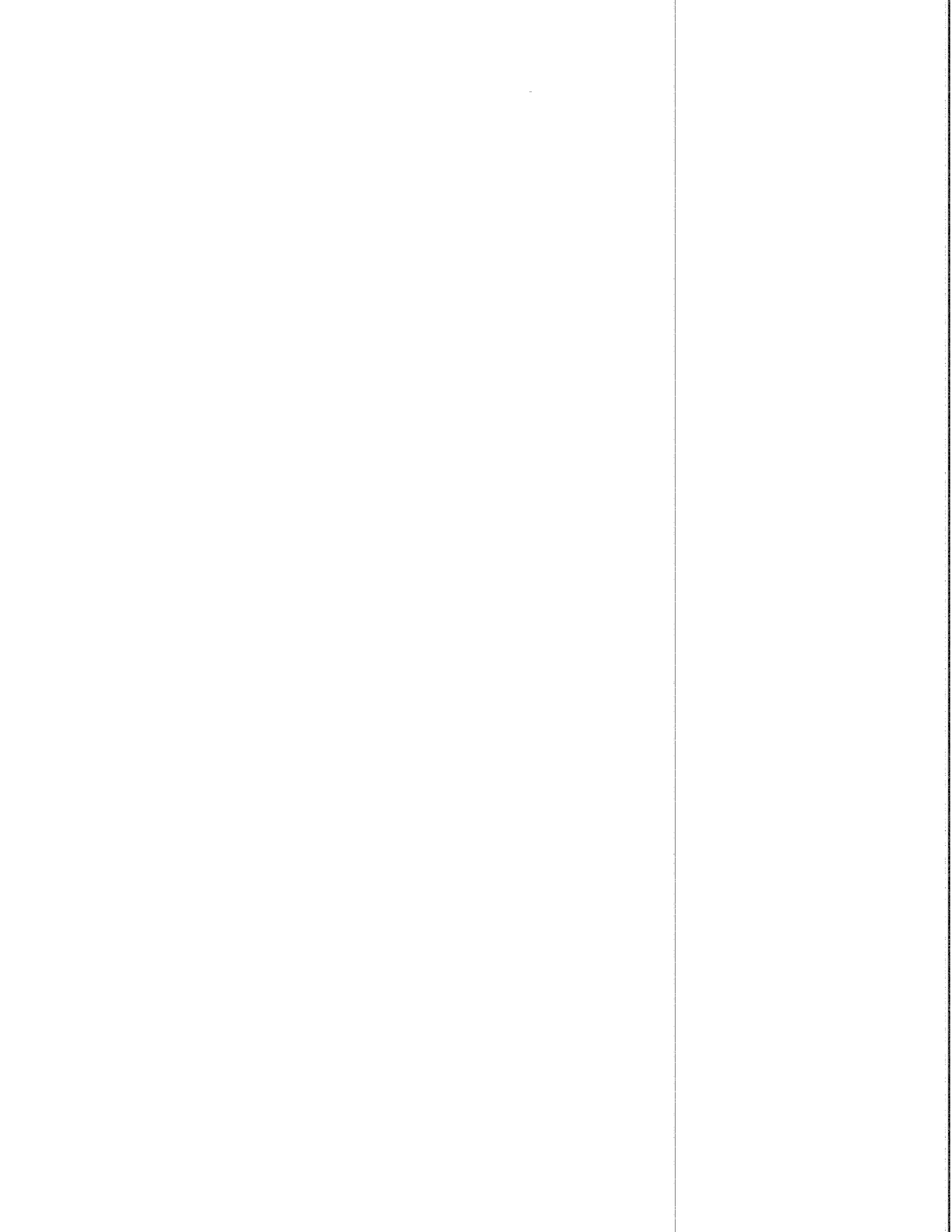
Elissa Schoenlank went to the Adirondack Medical Center in Saranac Lake, New York as a cancer patient; a lumpectomy was performed in October 2001. She then sought a second opinion in New York City and a second, separate tumor was found and a total mastectomy was performed in April of 2002 by Doctor Patrick Borgen at Memorial Sloan Kettering Hospital. (see the annexed letters from Dr. Woods McCahill of the Adirondack Medical Center of April 2, 2002, and Dr. Debra Mangino of Memorial Sloan Kettering Hospital, Exhibits B & C.)

BC/BS UW has refused to pay approximately seventy three percent (73%) of the medical bills for the Memorial Sloan Kettering Hospital doctors. These medical bills are for the treatment of a second cancerous lump that had to be removed at Sloan Kettering. The insurer does not deny the medical necessity, nor does the insurer claim that the charges are not customary and reasonable. **BC/BS UW claims that they have the right not to pay doctors bills because they have an arbitrary and undisclosed "set schedule of allowances"**. In a Blue Cross/Blue Shield of Utica Watertown letter dated September 3, 2002, at page 1, paragraph 5, line 4, Exhibit D the insurer states:

" ....Ms. Schoenlank has benefits ... based on a set of schedules, not payments based on usual, customary and reasonable (UCR) amounts."

#### The Failure to Disclose :

In over a half year of correspondence with the insurer (through the New York State Department of Insurance) they have yet to explain why the promotion advertising does not disclose these limitations.



Moreover they continue to refuse to disclose their "Set Schedule of Allowances" for payment to doctors which they treat as a trade secret yet rely upon in refusing to pay the vast majority of the monies due.

There are thus two failures to disclose which seem squarely within prohibitions of deception by omission of a material fact, both in the Bulletin "You Can Count on Us" distributed to the general public, and the "Set Schedule of Fees" which the insurer insists on keeping secret from its insured while they continue to refuse to pay seventy three percent (73%) of the doctor bills. This is hardly an immaterial part of the health coverage and the amount due but not paid now totals approximately twenty thousand dollars (\$20,000-- ) and is continuing. (The medical bills paid and unpaid were obtained from the insurer after a year of lengthy correspondence through the state insurance department and the listing is attached as Exhibit E.)

Argument:

It is not reasonable for the BC/BS UW to tell the public in print that: "you can count on us" and make promises about "choice", "low worry", "achieving the best possible health traditional coverage", and finish these promises with "under this plan you may choose any physician you prefer, but selecting a participating physician may save you some money" and neglect to provide the secret "set schedule of allowances".

Nor is it reasonable to fail to mention that you may have to pay about seventy three percent (73%) of you doctor bills. We believe a reasonable consumer would consider having to pay seventy three percent (73%) more than "some". Footnote \*

(Footnote: \* The insured also had to make co-payments, for which there is not objection and for which the insurer is not charged in this calculation, which can be determined by using Exhibit E.

**There is a serious issue of medical coverage, with third party intermediaries having life and death power over decisions when the patient is most vulnerable. The public is entitled to count on a higher standard of honesty in insurance promotions designed to influence that choice.**

**By this submittal our client seeks two things:**

- 1. to cause Blue Cross/ Blue Shield of Utica Watertown to pay the doctor bills for her cancer treatment; and**
- 2. to have the Commission adopt a rule reminiscent of the Rule governing advertising disclosure and trade practices of the funeral industry.**

**Respectfully submitted,**

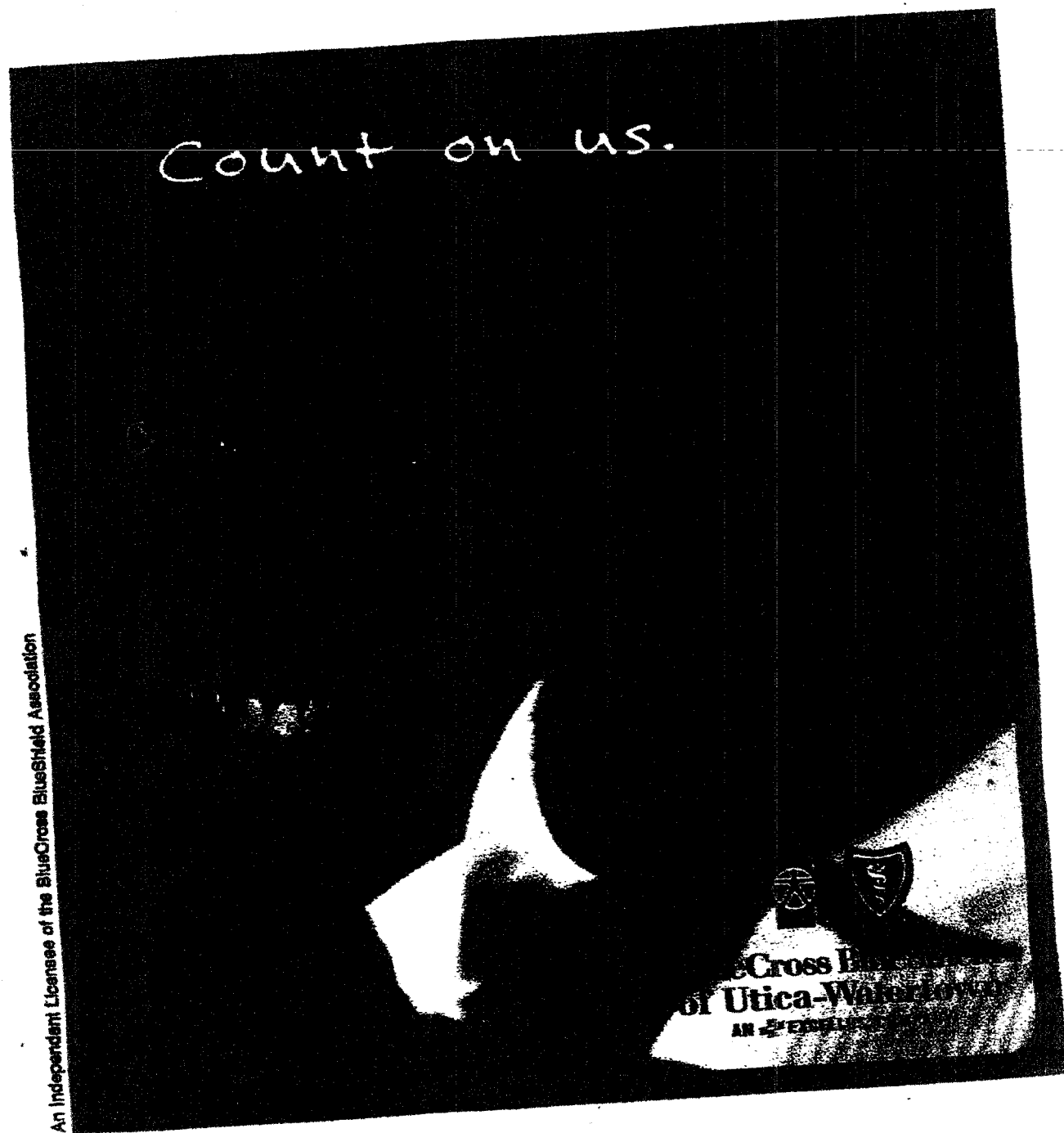


**Richard B. Kelly, Attorney for  
Elissa Schoenlank**

**Enclosed: Six (6) copies, all with Exhibits A to E.  
cc 1. General Counsel,**

- Blue Cross/ Blue Shield of Utica-Watertown**
- 2. Gregory V. Sperio, Superintendent  
New York State Department of Insurance**
- 3. Elliot Spitzer, Attorney General,  
State of New York**

**Make Placid Chamber - \$100 Deductible Comprehensive**



**Traditional**

EXHIBIT A 1 of 3 pgs

1107NA01

**Our Promise: More Choices. Less Worry.**  
**Helping You Achieve And Maintain The Best Possible Health.**

**Traditional Coverage**  
**Comprehensive Coverage - \$100/\$200 Deductible**

**Additional Flexibility**

Comprehensive coverage with little or no paperwork. Because we understand the importance of the provider-patient relationship, the comprehensive plan has been designed to give you more freedom to choose the doctor you know and trust with the largest network of participating providers locally and worldwide through our BlueCard Program.

| Deductible        |                           |
|-------------------|---------------------------|
| •\$100 Individual | •\$200 Family (Aggregate) |
| •\$400 Individual | •\$800 Family (Aggregate) |


**Covered Service**

- Hospital**
- Semi-private room and board (includes x-ray, lab, etc.) unlimited days
- Emergency accident treatment (within 72 hours)
- Medical emergencies (within 12 hours)
- Mental health conditions
- Prenatal and postnatal maternity care includes normal delivery, cesarean, ectopic or spontaneous termination
- Drugs, medications, blood transfusions and supplies
- Minor surgical procedures
- Surgical procedures and general anesthesia
- Use of operating, recovery and special care units
- Routine newborn baby care
- General Care Services**
- Doctor's office, hospital and home visits
- Private duty nursing (750 hours per calendar year)
- Second surgical opinion
- Prenatal and postnatal maternity care
- Home health care (40 days per calendar year)
- X-Ray, laboratory and pathological services (includes EKG and EEG)
- Physical, occupational, and speech therapy
- Radiation therapy and chemotherapy
- Durable medical equipment and prosthetic devices
- Ambulance service (ground/air)
- Human organ and tissue transplant recipient and donor
- Hospice care
- Outpatient alcoholism and substance abuse treatment (80 visits) (20 for family)
- Kidney Dialysis
- Heavy testing and treatment
- Electric stimulation (one per lifetime)
- Ambulatory surgery
- Chiropractic care

*Exhibit A 2 of 3 pgs*





**BlueCross BlueShield  
of Utica-Watertown**  
An  **Excelus Company**

Independent Licensee of the Blue Cross and Blue Shield Association

## BlueCross BlueShield of Utica-Watertown Comprehensive Coverage Advantages

### Choosing a Participating Physician

Under this health plan, you may choose any physician you prefer, but selecting a participating physician can save you money, time, and paperwork.

Participating Physicians are doctors who have a special agreement with BlueCross BlueShield of Utica-Watertown. A Participating Physician will complete your claim forms and send them directly to us for reimbursement. A Participating Physician will accept BlueCross BlueShield of Utica-Watertown's allowed amount for services rendered as payment in full, less any deductible and coinsurance.

### Home is Where the Care is

BlueCross BlueShield members receive coverage for away-from-home care under the BlueCard program. Claims serviced outside of our area need to be submitted to the provider's local BlueCross BlueShield office. If your provider does not participate with any BlueCross BlueShield office, please make a note to forward the claim to BlueCross BlueShield of Utica-Watertown. Participating BlueCard and out-of-area providers should submit the claim to their local BlueCross BlueShield office, await processing and then bill you for any deductible, coinsurance or non-covered services.

### Out-of-Area Claims

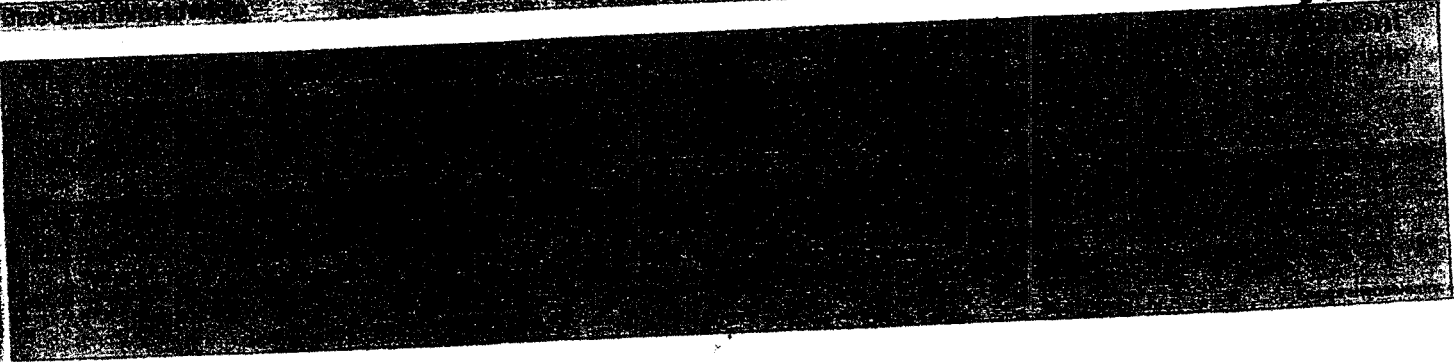


EXHIBIT A 3 of 3 pgs



# Adirondack Medical Center

Woods McCahill, M.D. • Medical Director of Health Centers  
Church Street • Lake Placid, New York 12946

April 9, 2002

RE: BC/BS of Utica 306

Mrs. Elissa Schoenlank  
199 Mirror Lake Dr. - PO Box 1927  
Lake Placid, NY 12946

To Whom It May Concern:

I am writing to ask that payments for Mrs. Schoenlank be justified to the services of Dr. Patrick Borgen at Memorial Sloan Kettering. The patient underwent mammography, a subsequent breast biopsy, and then lumpectomy here in October. The patient sought a second opinion from a pathologist at Cornell Medical Center and he felt that the tumor removed here in Saranac Lake was close to and involved the surgical margins of the lumpectomy, and at that time the patient sought a second opinion with Dr. Borgen at Sloan Kettering. Repeat mammograms done there before the patient had further surgery showed what turned out to be a second tumor at a different site in the left breast. The patient apparently has a highly aggressive malignant tumor and now the doctor at Sloan Kettering has proposed performing a mastectomy.

The patient does appear to have an extremely complicated course with her breast cancer and her seeking a second opinion at Sloan Kettering certainly seems warranted. I would like to request that you authorize payment to Dr. Borgen although he is out-of-plan.

Thanks very much for your consideration of this matter.

Sincerely,

Woods McCahill, MD

WM:ml  
#03336

EXHIBIT B

Elissa Schoenlank  
MRN#010879  
199 Mirror Lake Dr  
Lake Placid, NY 12946

To Whom It May Concern:

Ms. Schoenlank was well until October 2001, when she underwent a routine screening mammogram that demonstrated abnormal calcium of the left breast. She underwent a surgical biopsy at an outside institution, which revealed ductal carcinoma in situ with positive surgical margins. She then presented to our institution, Memorial Sloan-Kettering Cancer Center (MSKCC), on January 11<sup>th</sup>, 2002 for surgical consultation with Dr. Patrick Borgen. On January 21<sup>st</sup>, 2002, Ms. Schoenlank underwent a left breast re-excision in order to obtain clear margins, since the cornerstone for the treatment and care of breast cancer is complete surgical removal. Again, pathology revealed ductal carcinoma in situ with positive margins. On March 21<sup>st</sup>, 2002, another attempt was made to remove all the cancer by surgical excision here at MSKCC. Once again more cancer was found. At that time the decision was made to perform a total mastectomy, as the DCIS appeared to be present diffusely throughout the breast and therefore breast conservation was no longer a viable or safe option.

On April 22<sup>nd</sup>, 2002, a left total mastectomy with sentinel lymph node biopsy was performed, concurrently. The rationale behind this is that if you find an invasive cancer within the mastectomy specimen and had not sampled the lymph nodes at the time of mastectomy you have then lost the opportunity to perform a sentinel lymph node biopsy. The patient will then need to undergo a full axillary dissection, and therefore be at risk for multiple comorbidities, namely lymphedema. The patient did have multiple residual foci of ductal carcinoma in situ. All sentinel lymph nodes were negative on initial screening, but intense scrutiny by immunohistochemical stain did reveal metastatic cancer cells in one of the lymph nodes, thus supporting our decision. The patient is now under the care of a medical oncologist and continues to see us biannually. I feel her treatment has been prudent and will definitely result in a decreased recurrence rate and may result in improved long-term survival.

EXHIBIT C 1 of 2 Pgs



If I can be of further assistance please do not hesitate to call my office at 212-639-5248.

Sincerely,



Dr. Debra Mangino  
Breast Service  
Memorial Sloan-Kettering Cancer Center

DM/rhg

EXHIBIT C 2072 P95



BlueCross BlueShield of Central New York  
 BlueCross BlueShield of the Rochester Area  
 BlueCross BlueShield of Utica-Watertown  
 EXCELLENCE COMPANIES

Columbia

September 3, 2002

VIA FACSIMILE

Mr. Karl F. Glindmyer  
 Examiner, Consumer Services Bureau  
 State of New York Insurance Department  
 One Commerce Plaza  
 Albany, New York 12257

RE: Complainant: Elissa D. Schoenlank  
 Dept. File #: CSB-233448  
 Id No.: 149302421  
 NAIC#: 55107

Dear Mr. Glindmyer:

This letter is in response to your inquiry regarding our subscriber, Elissa Schoenlank.

As you requested, we have reviewed Ms. Schoenlank's file with the additional information in Mr. Richard B. Kelly's letter dated July 17, 2002 and we have the following information to offer.

Mr. Kelly's letter states we did not address the issues he filed, in his original complaint to you, in our letter dated July 24, 2002. We responded, somewhat generically, because Mr. Kelly did not provide us with any specific dates of service to investigate. Because Mr. Kelly has now provided us with the "Statement of Account for Physician Services" from The Sloan-Kettering Cancer Center, we can now respond to his questions regarding the reimbursement of these claims.

Mr. Kelly states that our Plan has allowed zero payment for services rendered by J. Disa, MD and C. Dang, MD. In response to this, we have enclosed a chart, which outlines the status and payments amounts, when applicable, of the claims processed for *all* of the providers referenced in this billing statement.

Mr. Kelly goes on to state we are refusing to pay any more than 25 percent of the doctors bills from Sloan-Kettering and that the insurance company is "in breach of its promise to pay the reasonable and necessary doctors bills". What Mr. Kelly fails to comprehend is that the contract selected by the employer group, through which Ms. Schoenlank has benefits, is based on a set schedule of allowances and not payments based on usual, customary and reasonable (UCR) amounts. Just because these services have been rendered in New York City and the charges are generally much higher than if the services were rendered in our area, does not mean we can adjust our schedule of allowances to reimburse these claims with a higher dollar charge. The contract provides for payments based on the schedule, not UCR.

EXHIBIT D p1 of 2

344 South Warren Street • P.O. Box 4717 • Syracuse, New York 13221  
 web: www.bcbacny.org

An Independent Licensee of the BlueCross BlueShield Association

| Date of Service | Provider      | Procedure               | Total Charge                        | Allowance                       | Payment                         | Patient Responsibility (Amount and Reason)  |
|-----------------|---------------|-------------------------|-------------------------------------|---------------------------------|---------------------------------|---|
| 1/11/02         | Dr. Borgen    | 99274                   | \$305.00                            | \$137.07 applied to deductible  | <del>\$0.00</del>               | \$305.00 patient responsibility   |
| 1/16/02         | Dr. Ginsberg  | 71020                   | \$47.00                             | \$13.66 applied to deductible   | \$0.00                          | \$ 47.00 patient responsibility   |
| 1/7/02          | Dr. Huvos     | 88321                   | \$300.00                            | \$65.25                         | \$65.25                         | \$234.75-Difference between allowance and charge  |
| 1/21/02         | Dr. Morris    | 76096 & 19290           | \$378.00                            | \$124.63 applied to deductible  | \$0.00                          | \$378.00 patient responsibility   |
| 1/18/02         | Dr. Liberman  | 76090                   | \$116.00                            | \$34.16 applied to deductible   | \$0.00                          | \$116.00 patient responsibility   |
| 1/21/02         | Dr. Fortunoff | 00400                   | \$1035.00                           | \$256.16                        | \$256.16                        | \$778.84-Difference between allowance and charge  |
| 1/16/02         | Dr. Weinstein | 93010                   | \$30.00                             | \$9.57                          | \$9.57                          | \$20.43-Difference between the allowance and the charge   |
| 1/21/02         | Dr. Brogi     | 88307                   | \$300.00                            | \$81.31                         | \$81.31                         | \$218.69-Difference between the allowance and the charge  |
| 1/11/02         | Dr. Liberman  | 76090                   | \$139.00                            | \$32.80                         | \$32.80                         | \$106.20-Difference between the allowance and the charge  |
| 1/21/02         | Dr. Borgen    | 19120                   | \$1855.00                           | \$387.12                        | \$387.12                        | \$1467.88-Difference between the allowance and the charge   |
| 1/21/02         | Dr. Morris    | 76098                   | \$35.00                             | \$8.20                          | \$8.20                          | \$26.80-Difference between the allowance and the charge   |
| 3/21/02         | Dr. Brogi     | 88307                   | \$900.00                            | \$244.92                        | \$244.92                        | \$655.08-Difference between charge and allowance  |
| 3/21/02         | Dr. Ragasa    | 00400                   | \$805.00                            | \$252.00                        | \$252.00                        | \$553.00-Difference between charge and allowance  |
| 4/22/02         | Dr. Disa **   | 19357                   | \$6260.00                           | \$1736.36                       | \$1736.36                       | \$4523.64-Difference between charge and allowance   |
| 4/22/02         | Dr. Borgen    | 19180<br>38525<br>98792 | \$3245.00<br>\$1865.00<br>\$1575.00 | \$792.73<br>\$278.16<br>\$16.01 | \$792.73<br>\$278.16<br>\$16.01 | \$2452.27<br>\$1586.84<br>\$1558.99<br>TOTAL = \$5598.10<br>Difference between charge and allowance |
| 4/22/02         | Dr. Dang **   | 99245                   | \$550.00                            | \$251.08                        | \$251.08                        | \$298.92-Difference between charge and allowance  |
| 3/21/02         | Dr. Borgen    | 19160                   | \$2305.00                           | \$451.50                        | \$451.50                        | \$1853.50-Difference between charge and allowance   |

EXHIBIT E p1/2

|         |               |                |                      |                      |                      |   |
|---------|---------------|----------------|----------------------|----------------------|----------------------|---|
| 4/10/02 | Dr. Borgen    | 99212          | \$85.00              | \$34.16              | \$34.16              | \$50.84-Difference between charge and allowance                                 |
| 4/9/02  | Dr. Disa      | 99244          | \$400.00             | \$155.09             | \$155.09             | \$244.91-Difference between charge and allowance                                |
| 4/22/02 | Dr. Yeung     | 78195          | \$250.00             | \$57.73              | \$57.73              | \$192.27-Difference between charge and allowance                                |
| 4/22/02 | Dr. Fortunoff | 00402          | \$2300.00            | \$900.00             | \$900.00             | \$1400.00-Difference between charge and allowance                               |
| 4/22/02 | Dr. Soslow    | 88307<br>88342 | \$900.00<br>\$240.00 | \$306.16<br>\$216.92 | \$306.15<br>\$216.92 | \$593.85<br>\$23.08<br>TOTAL = \$616.93-Difference between charge and allowance |

Please note - these services are listed in order of how they appear on the "Statement of Account Services", not in date order.

\*\* These are the services for Dr. Dang and Dr. Disa that Mr. Kelcy references in his letter that we have allow ZERO payment for.

Total charges \$ 26,370.-  
 Refused to pay 19,305.-  
 (-ed.)

EXHIBIT E p 2 of 2