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JUL 18 2012

Department of Insurance  
State of Idaho

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*Attorneys for Department of Insurance*

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE**

**STATE OF IDAHO**

In the Matter of:	)	Docket No. 18-2781-12
	)	
DELTA DENTAL PLAN OF IDAHO, INC.	)	<b>ORDER ADOPTING</b>
	)	<b>REPORT OF EXAMINATION</b>
Idaho Certificate of Authority: 1901	)	<b>AS OF DECEMBER 31, 2010</b>
NAIC Company Code: 47791	)	
	)	
	)	
	)	

The Report of Examination as of December 31, 2010 (Report) of DELTA DENTAL PLAN OF IDAHO, INC. (Company), was completed by examiners of the Idaho Department of Insurance (Department) and signed the 25<sup>th</sup> day of May 2012 by the Examiner-in-Charge, David W. Emery, CFE, FLMI, and a verified copy was filed with the Department effective May 25, 2012. A copy of the verified Report, identical to the one filed with the Department, was delivered to the Company via email on May 25, 2012, to Mr. Greg Donaca, Chief Financial

Officer. The final verified Report is attached hereto as Exhibit A and incorporated herein, and includes a minor correction to the May 25, 2012 report on page 11.

### **WRITTEN SUBMISSION**

The Company submitted a letter dated June 25, 2012 from Ms. Jean De Luca, President and CEO, as provided for under Idaho Code § 41-227(4), containing the Company's written submissions and rebuttals to the Report. The e-mailed response letter was received on June 25, 2012 (Monday), with a hard copy being received on June 28, 2012. Attached to the response letter were copies of various correspondence exchanged with the Department with regard to examination issues, as well as proposed changes to the Report. The letter also included an executed Waiver consenting to the immediate entry of a final order by the Director of the Department and waiving the Company's right to a hearing and right to seek reconsideration or appeal of the order. However, the Company's Waiver was conditioned upon "the examiner's legal analysis, conclusions and recommendation be[ing] deleted from the Report." The Department does not accept the conditions of the Waiver, nor does it accept any revisions to the Report. Thus, the Waiver is non-operational and none of the Company's rights to seek reconsideration or judicial review are affected by the Waiver. The Company's June 25, 2012 letter, including all enclosures, attached hereto as Exhibit B, is incorporated herein and is part of the public record, as requested by the Company in its June 25, 2012 letter.

### **ORDER**

NOW THEREFORE, after carefully reviewing the above-described Report of Examination as of December 31, 2010, attached hereto as Exhibit A, and the written submission, attached hereto as Exhibit B, and good cause appearing therefor,

IT IS HEREBY ORDERED that the above-described Report of Examination as of December 31, 2010, which includes the findings, conclusions, comments and recommendations supporting this order, is hereby ADOPTED as the final examination report and as an official record of the Department under Idaho Code § 41-227(5)(a).

DATED and EFFECTIVE at Boise, Idaho this 18<sup>TH</sup> day of July 2012.

STATE OF IDAHO  
DEPARTMENT OF INSURANCE

  
WILLIAM W. DEAL  
Director

**NOTIFICATION OF RIGHTS**

This is a final order of the Director. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Department will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
- iv. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>TH</sup> day of July, 2012, I caused the foregoing document to be served on the following parties in the manner set forth below:

Ms. Jean De Luca President and CEO Delta Dental Plan of Idaho, Inc. 555 East Parkcenter Blvd. Boise, Idaho 83706 e-mail: jdeluca@deltadentalid.com	<input checked="" type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input checked="" type="checkbox"/> _____	certified mail first class mail hand delivery facsimile e-mail
---	--	--

Mr. William C. Roden Attorney-at-Law 599 West Bannock St., Suite B Boise, Idaho 83702-2110 e-mail: broden1@qwestoffice.net	<input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input type="checkbox"/> _____ <input checked="" type="checkbox"/> _____	certified mail first class mail hand delivery facsimile e-mail
--	---	--

Georgia Siehl, CPA, CFE Bureau Chief / Chief Examiner Idaho Department of Insurance 700 W. State St., 3 <sup>rd</sup> Floor Boise, Idaho 83720-0043 e-mail: Georgia.Siehl@doi.idaho.com	<input type="checkbox"/> _____ <input type="checkbox"/> _____ <input checked="" type="checkbox"/> _____ <input type="checkbox"/> _____ <input checked="" type="checkbox"/> _____	certified mail first class mail hand delivery facsimile e-mail
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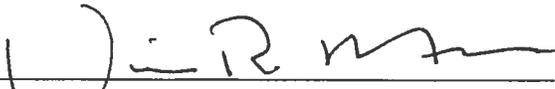
  
 \_\_\_\_\_  
 William R. Michels, MBA, CPA, CFE  
 Deputy Chief Examiner  
 IDAHO DEPARTMENT OF INSURANCE

EXHIBIT A

DEPARTMENT OF INSURANCE

STATE OF IDAHO



REPORT OF EXAMINATION

of the

DELTA DENTAL PLAN OF IDAHO, INC

(NAIC Company Code 47791)

as of

December 31, 2010

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*State of Idaho*  
**DEPARTMENT OF INSURANCE**

C. L. "BUTCH" OTTER  
Governor

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WILLIAM W. DEAL  
Director

Boise, Idaho  
May 25, 2012

The Honorable William W. Deal  
Director of Insurance  
State of Idaho  
700 West State Street  
Boise, Idaho 83720

Dear Director:

Pursuant to your instructions, in compliance with Sections 41-219(1) and 41-3426, Idaho Code, and in accordance with the practices and procedures promulgated by the National Association of Insurance Commissioners (NAIC), we have conducted an examination as of December 31, 2010, of the financial condition and corporate affairs of:

Delta Dental Plan of Idaho, Inc.  
555 E Parkcenter Blvd.  
Boise, Idaho 83706

hereinafter referred to as the "Company," at its offices in Boise, Idaho. The following Report of Examination is respectfully submitted.

## SCOPE OF EXAMINATION

This examination covered the period January 1, 2006, through December 31, 2010. The examination was conducted at the Boise, Idaho office of the Company by examiners from the State of Idaho. The examination was conducted in accordance with Sections 41-219(1) and 41-3426, Idaho Code, the National Association of Insurance Commissioners (NAIC) *Financial Condition Examiners Handbook*, the NAIC *Market Regulation Handbook*, and the NAIC *Accounting Practices and Procedures Manual*.

All accounts and activities of the Company were considered in accordance with the NAIC's risk-focused examination process. The Financial Examiners Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management's compliance with Statutory Accounting Principles and annual statement instructions as governed and prescribed by Idaho law. A risk assessment of the Company's IT systems and controls was performed.

A letter of representation was signed by the Company attesting to its ownership of all assets and to the nonexistence of unrecorded liabilities or contingent liabilities.

In addition to the Report of Examination, a Management Letter was issued to the Company by the Department which covered items that were not included in the Report, due to the materiality threshold, items that were related to proprietary/operational issues, or minor accounting/annual statement reporting corrections.

## PRIOR EXAMINATION

The prior financial examination was conducted by the Idaho Department of Insurance covering the period January 1, 2001 through December 31, 2005.

A review was made to ascertain what action was taken by the Company with regard to comments and recommendations made by the Department in the prior examination report. Unless otherwise mentioned in the *Comments and Recommendations* section of this report, the prior report exceptions were adequately addressed by the Company.

## HISTORY AND DESCRIPTION

The Company was incorporated on June 21, 1971, as a non-profit, non-stock professional service corporation under Title 41, Chapter 34, Idaho Code, and commenced business on December 15, 1971. The Company provides prepaid dental service programs to Delta's subscribers, their eligible dependents or other beneficiaries.

Company bylaws define a subscriber as: "...a person, group, corporation, or association contracting with the corporation for dental and health care services to be rendered on behalf of such person or entity by a dentist who has entered into a service agreement with the corporation, or by a non-participating dentist or by a health provider pursuant to a previous written agreement between the subscriber and the corporation."

Professional services (dental) are furnished to the subscribers by “participant licensees”<sup>1</sup> as prescribed by Sections 41-3413(1)(a) and 41-3403(9)(b), Idaho Code. In addition to the aforementioned activities, the Company also operates under Section 41-3413(2), Idaho Code, as a “*compensated servicing agent*” (a.k.a. third party administrator) for uninsured/self-funded dental plans. The Company is a member of the Delta Dental Plan Association, and provides programs to employers who are headquartered in the State of Idaho.

As a non-profit entity, the Company is exempt from Federal income tax under Section 501(c)(4) of the Internal Revenue Code. This exemption was granted in February 1973 and remains in effect. The Company is also exempt from state income tax under Section 63-3025B, Idaho Code; however, it is subject to a tax imposed upon each subscriber’s contract under Section 41-3427, Idaho Code.

In 2004, the Company registered a “doing business as” (DBA) name of “Delta Dental of Idaho” with the Department. The Company’s legal name, however, remains “Delta Dental Plan of Idaho, Inc.”

### MANAGEMENT AND CONTROL

As mentioned earlier, the Company is a member of the Delta Dental Plan Association, which serves as a non-affiliated parent organization for all Delta Dental Plans countrywide. During the period under examination, the Company was not a member of a holding company system as contemplated under Title 41, Chapter 38, , Idaho Code.

The Company is owned by member dentists. According to the Company’s bylaws: “*To be eligible to become and remain a member of this Corporation, a dentist shall be the holder of a license issued by the State of Idaho to practice dentistry within the State of Idaho. Licensed dentists who are members shall conduct an active dental practice in a geographical area served by the Corporation; shall carry and maintain [an] in force errors and omissions liability insurance policy in a reasonable amount as specified by the Board of Directors; shall meet the Corporation’s credentialing criteria; [and] shall execute a service agreement with the Corporation...*”

The Board of Directors sets overall policy and approves the strategic direction of the Company. The Board of Directors consists of up to thirteen (13) directors. The Board shall include two classes, Member Directors and Independent Directors. At all times the majority of the Directors shall be independent Directors (as defined by the Instructions for IRS Form 990). Each Director’s term will be staggered. Each Director shall serve for a term of three (3) years. Each Director may be elected or appointed for successive terms.

The time and place of the annual meeting of the members is determined by the Board of Directors. Regular meetings of the Board of Directors shall be held at a place and time determined by the Board. A regular meeting of the Board shall be held after the adjournment of the annual meeting of the members. Special meetings may be called by the chairman whenever deemed proper or by any two of the directors upon written notice or by personal telephone call.

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<sup>1</sup> “Participant licensee” is one who has entered into a service agreement with a service corporation – see § 41-3403(8), Idaho Code.

Directors shall receive an honorarium for their time for service on the Board of Directors in an amount set periodically by the Board. In addition, Directors may be reimbursed for the expenses incurred in direct service to the Company.

The officers of the Board include chairman, chairman-elect, and immediate past-chairman. The officers of the Company include secretary, treasurer, and president (also known as chief executive officer). Such other officers, assistant officers, and agents may be appointed as necessary. Officers serve from the time of their election until the next annual election or until their successors are elected and qualified.

The bylaws of the Company authorize an executive committee comprised of the chairman, chairman-elect, immediate past-chairman, secretary/treasurer and the chief executive officer.

Pursuant to the bylaws of the Company, the Board of Directors has the right to appoint such committees as it shall deem proper. In this manner committees are appointed; their respective members are set forth under the sub-caption below entitled "Committees."

Directors and Officers

The following persons were serving as directors and officers at December 31, 2010:

Directors:

<u>Name</u>	<u>Business Address</u>	<u>Name</u>	<u>Business Address</u>
Terry E. Brady, DDS	Boise, Idaho	William McCann, Jr.	Lewiston, Idaho
Jack Kulm, DMD	Wendell, Idaho	Nancy Briggs	Boise Idaho
Kyle Siemen, DMD	Pocatello, Idaho	Steven Bruce, DMD	Boise, Idaho
Park Price	Idaho Falls, Idaho	Kurt Petellin, DDS	Coeur d'Alene, Idaho
Lori E. Lovelace, DDS	Nampa, Idaho	Mike Fery	Boise, Idaho
Steven Floyd Nielsen, DDS	Shelley, Idaho	Mike Mooney	Boise, Idaho
James Pierce, DDS	Lewiston, Idaho		

Officers:

Jean De Luca	President
Nancy Briggs	Secretary/Treasurer
Greg D. Donaca	Assistant Secretary

Committees

At December 31, 2010, the following persons were serving as members of their respective committees:

Executive Committee

Kurt Petellin, DDS, Chairman  
 Mike Mooney, Chairman-Elect  
 Steven Bruce, DMD, Immediate Past Chairman  
 Mike Fery, Secretary-Treasurer  
 Jean De Luca, Ex-officio

Audit Committee

Mike Fery, Chairman  
 William McCann, Jr.  
 Park Price  
 Mike Mooney  
 Nancy Briggs  
 Jean De Luca, Ex-officio  
 Greg Donaca, Ex-officio

Compensation Committee

Mike Mooney, Chairman  
Mike Fery  
William McCann, Jr.  
Kurt Petellin, DDS  
Terry Brady, DDS  
Steve Bruce, DMD  
Nancy Briggs

Governance Committee

Mike Mooney, Chairman  
Steve Bruce, DMD  
Park Price  
Mike Fery  
William McCann, Jr.  
Kurt Petellin, DDS  
Jean De Luca, Ex-officio

Dental Policy Committee

Steven Bruce, DMD, Chairman  
Terry E. Brady, DDS  
Lori E. Lovelace, DDS  
Kurt Petellin, DDS  
Steven Nielsen, DDS  
James Pierce, DMD  
Kyle Siemen, DMD  
Karen Koch, Ex-officio  
Jean De Luca, Ex-officio

Investment Committee

Mike Fery, Chairman  
William McCann, Jr.  
Mike Mooney, Ad-Hoc  
Park Price  
Jean De Luca, Ex-officio  
Greg Donaca, Ex-officio

Community Outreach Committee

Mike Mooney, Chairman  
Steven Bruce, DMD  
Jim Pierce, DMD  
Corey Suber, Saint Alphonsus  
Dr. Sarah Toevs, Boise State University  
Jean De Luca, Ex-officio

Corporate Governance

The Company's corporate governance activity was evaluated in conjunction with examination planning. This activity is comprised of three major sub-components: organizational structure (includes assignment of authority and responsibility), assessment of the Board of Directors and management assessment.

In order to better assess corporate governance, interviews were held with the following key Board and management personnel:

<u>Name</u>	<u>Title</u>
Jean De Luca	President and CEO
Mike Mooney/Mike Fery	Chairman/Chairman-elect
Greg Donaca	CFO
Tom Burden/Karen Koch	Operations Manager
Judy Dishner	Underwriter
Joanna Ramer	Sales Manager

Based on interviews of the above key management and Board members, it appears that the Company's executive management is aware of and fully understands their responsibilities and duties. Job descriptions for key executives and management positions were also reviewed. Information learned in the corporate interviews correlated to the job descriptions of those interviewed in all material respects.

The aforementioned duties and responsibilities appear to have been implemented by diligent and competent executive management.

Based on a review of the Company's organizational chart, management interviews and discussions, and examination observations, it appears that the Company has a sound organizational structure in place.

At the functional level, it appears there is appropriate separation of duties and the organizational chart is periodically reviewed and modified, as appropriate.

It also appears the Board meets the duty of care and duty of loyalty standards in fulfilling their corporate obligations. The examination concluded that the corporate governance structure in place at the Company is robust, the management team is competent and risk mitigation strategies are in place for all key activities.

### Conflict of Interest

The Company had a policy in place that required directors and officers to annually complete Fiduciary & Ethical Standards and Confidential Agreements. Key employees would annually complete conflict of interest questionnaires. The Fiduciary & Ethical Standards and Confidential Agreement was revised in 2005 and approved by the Board of Directors on June 11, 2005. The revised agreement no longer requires officers or key employees to execute such agreements or conflict of interest questionnaires.

The agreements completed during the period January 1, 2006 through December 31, 2010 appeared to appropriately disclose any possible or probable conflicts of interest.

### Contracts and Agreements

The Company had the following agreements and/or arrangements in effect at December 31, 2010:

#### Marketing and Third Party Administration Agreement

The Company entered into the above referenced agreement with Avesis Third Party Administrators, Inc. (Avesis) on December 4, 2009 whereby:

- Delta will act as a General Agent for Avesis to distribute vision and hearing plans, underwritten by Fidelity Security Life Insurance Company.
- Such plans will be sold as the "*Delta Vision Powered by Avesis*" and/or "*Hearing Program by Delta Dental of Idaho Powered by Avesis.*"
- Delta may only market and sell Avesis voluntary hearing plans when the plan is sold with a Delta voluntary dental plan (all members selecting voluntary dental must also select voluntary hearing). Employer paid hearing plans may be sold on a stand-alone basis or with a Delta employer paid or voluntary dental plan basis.
- Delta assumes responsibility for marketing the vision programs and hearing programs to all prospective and all current Delta program clients and producers.
- All marketing material must first be approved by Avesis in writing.
- Delta assumes responsibility for enrollment of new clients.
- Avesis is responsible for the network of vision and hearing providers.
- Avesis is responsible for the group premium vision and/or hearing billing/collection function.
- Delta receives a sales and marketing fee which is a percent of gross premiums collected.

The risk-of-loss on the vision and hearing insurance product(s) is underwritten by *Fidelity Security Life Insurance Company*. Avesis holds an Idaho TPA license and Fidelity Security holds an Idaho disability (excluding managed care) license.

Under this agreement, Delta is functioning as a paid producer, both soliciting and selling the Fidelity policies. The professional service corporation business model contemplated by Chapter 34, Title 41, however, makes no provision for a service company to directly sell another insurance company's policies to its subscribers.

The statutory language of Title 41, Chapter 34 instead prescribes the use of:

- 1) a "*service agreement*" between a service corporation and a licensee under which the licensee agrees to render all or part of one or more health care services to subscribers of the service corporation. (see § 41-3403(5), Idaho Code); and
- 2) a "*subscriber's contract*" between the service corporation and its subscriber under which all or part of one or more health care services is to be rendered to or on behalf of the subscriber by a licensee that has entered into a service agreement with such corporation covering such services (see § 41-3403(6)), Idaho Code).

The service corporation must have privity of contract with both of the above two (2) distinct elements, the service agreement and the subscriber contract. The Avesis/Delta agreement, however, lacks both of the aforementioned required distinct elements.

Further, Delta's Articles of Incorporation limit its activities to strictly dental by stating: "*The category of participant licensee services to be provided is dentists.*" [Underline emphasis added.]

Therefore, the agreement with Avesis, where Delta is acting as a paid producer by soliciting and/or selling the Fidelity Security Life Insurance Company hearing and vision policies to its subscribers, is in violation of the Idaho Insurance Code, including the following Idaho Code Sections:

§ 41-3413(1)(a):

(1) A professional service corporation shall have the right to provide to its subscribers part or all of the following services and benefits only:

(a) Professional services furnished to the subscriber by one or more specified categories of participant licensees...[underline emphasis added]

§ 41-3415(2):

(2) Each such *service agreement* shall require the participant licensees to furnish to subscribers of the service corporation the professional services which are, *under the subscriber's contract*, to be furnished by participant licensees; and this obligation so to furnish such service, *as provided for in the subscriber's contract, shall be a direct obligation of the participant licensees to the subscribers as well as to the service corporation.* [italic emphasis added]

§ 41-3406(1):

The articles of incorporation shall specify the category or categories of participant licensee services to be provided by a professional service corporation;

Therefore, it is recommended that the Company come into compliance with the above cited Idaho Insurance Code sections by either terminating the Avesis contract or assigning the Avesis\_contract to a subsidiary, or to otherwise restructure the relationship with Avesis or the Company's corporate structure so as to cause the Company to be in compliance.

#### Service Agreements

The Company and dentists entered into Dentist Membership and Participation agreements. The agreement was modified in 1997 and approved by the Board of Directors on March 8, 1997. Under terms of the modified agreements, dentists agree to render dental services on behalf of the Company to eligible subscribers and their covered dependents. The agreements are continuous and may be terminated by either party by not less than thirty days written notice. Such right on the part of the Company is to be exercised only by the action of its Board of Directors.

#### Refundable Premiums

According to terms of retention contracts, the Company is obligated to refund to the contract holder any excess premium remaining at the conclusion of the contract period. The amount to be returned is estimated by reducing the gross premiums received by the total claims paid, as well as those incurred, and by the agreed upon amount allocated for administrative fees.

#### Investment Consultant and/or Advisor Agreements

Investment management and advisory services were provided to the Company by Wells Fargo Bank for the Company's bond portfolio. Under terms of the investment advisor agreement, Wells Fargo Bank has authority to purchase and/or sell securities for the Company's account. Such cash and securities are entrusted at a commercial bank or securities brokerage firm for custodial purposes in the Company's name. Fees are paid quarterly and are based on a percentage of the portfolio's market value at quarter-end, subject to a minimum fee. The agreement may be terminated at will by written notice by either party and current quarterly fees shall be prorated to the Company.

### CORPORATE RECORDS

#### Articles of Incorporation and Bylaws

The original Articles of Incorporation were filed with the Idaho Secretary of State on June 22, 1971. The Company's records indicated that the Articles of Incorporation and Bylaws were not amended during the period under examination. However, subsequent to the examination period, effective May 20, 2011, the Director of the Idaho Department of Insurance approved the amended and restated Company's Bylaws. The restated Bylaws mainly added clarifying language throughout the previous Bylaws.

#### Minutes of Meetings

A review of the minutes of the meetings of the membership, Board of Directors and committees for the examination period and subsequent thereto, indicated compliance with the Articles of Incorporation and Bylaws with respect to annual meeting dates, election of directors, and officers, and the transaction of corporate business.

This review of the minutes also indicated that a quorum was present at all Board of Directors' meetings and the Directors' compensation was properly authorized. Further, the Investment Committee and the Board of Directors approved investments of the Company as required by Section 41-704, Idaho Code.

### FIDELITY BOND AND OTHER INSURANCE

Insurance coverage for the protection of the Company has been maintained through the period under examination. Coverages in effect as of December 31, 2010 included a business owners special policy for the building, business personal property, general liability, and employee dishonesty; a directors and officers liability policy; workers compensation insurance; a standard automobile policy for the leased automobiles; a fidelity blanket bond specifically for the Company's 401(k) and profit sharing plans; and a financial institution bond.

The Company maintained employee dishonesty coverage in compliance with Section 41-3432, Idaho Code. The financial institution bond coverage maintained by the Company met the suggested minimum limits recommended by the NAIC *Financial Condition Examiners Handbook*.

The insurance companies providing coverage to the Company are licensed or otherwise authorized in the state of Idaho.

### PENSION, STOCK OWNERSHIP AND INSURANCE PLANS

#### 401(k) and Profit Sharing Plan

The Company maintained the Delta Dental 401(k) Retirement Savings Plan for its employees. This plan is a substitution and amendment of the Money Purchase Pension Plan originally established January 1, 1985. The Board of Directors approved the 401(k) plan on September 21, 1996. The Plan was again amended in 2002 to change vesting requirements. The Board of Directors approved the amendment on October 25, 2002. The 401(k) Plan was again amended to comply with IRS statutory changes and other guidance. The amendment was approved by the Board of Directors on February 10, 2007.

Under the 401(k) Plan, the Company's matching contributions are an amount equal to 200 percent of each participant's salary reduction contributions for the plan year, not to exceed 6 percent of the participant's salary eligible for contributions.

The Company was also able to make qualified employer contributions for its nonhighly paid employees to the 401(k) plan. These employer contributions to the plan are determined by the Board of Directors at the end of each year.

Group life, health, disability, vision and dental insurance coverages were also provided to the Company's employees.

The Company's costs for their portion of the 401(k) plan and employee insurance through year-end have been funded and properly included in the accounts.

Delta Dental Plan of Idaho, Inc. Code Section 457 Deferred Compensation Plan

The Company maintained a deferred compensation program for the benefit of participating dentists. See Note 2 in "Notes to the Financial Statements" for further explanation.

Delta Dental Executive Deferred Compensation Plan (Rabbi Trust)

On December 1, 2003, The Company entered into a supplementary income retirement trust agreement (rabbi trust) for certain employees. See Note 2 in "Notes to the Financial Statements" for further explanation.

TERRITORY AND PLAN OF OPERATION

As mentioned earlier, the Company is licensed only in the State of Idaho as a domestic non-profit, non-stock professional service corporation. The Company provides prepaid dental service programs to subscribers, their eligible dependents, or other beneficiaries. Operations of the Company are conducted from its administrative office located in Boise, Idaho.

The Company markets its insurance products through brokers and appointed producers located throughout the state of Idaho. At December 31, 2010, the Department's listing of appointed producers and agencies was compared to the listing of active producers and agencies provided by the Company. No exceptions were noted.

STATUTORY AND SPECIAL DEPOSITS

Professional Service Corporations are not required to maintain a statutory deposit pursuant to Title 41, Chapter 34, Idaho Code.

GROWTH OF THE COMPANY

The Company's Growth for the years indicated, as taken from its Annual Statements (or as adjusted by the examination report) is shown in the following schedule:

<u>Year</u>	<u>Admitted</u>			
	<u>Assets</u>	<u>Liabilities</u>	<u>Surplus</u>	<u>Net Income</u>
2005 *	19,991,091	8,849,976	11,141,115	389,160
2006	23,946,017	10,297,384	13,648,633	1,679,563
2007	26,676,040	11,481,362	15,194,678	2,168,830
2008	22,766,073	8,630,885	14,135,188	844,106
2009	27,573,704	10,024,676	17,549,028	890,675
2010 *	30,326,082	11,282,481	19,043,601	1,111,144

\* As determined by Examination

## CLAIMS EXPERIENCE

The Company's claims experience for the examination period, January 1, 2006 through December 31, 2010, were derived from amounts reported in the Company's Annual Statements as follows:

<u>Year</u>	<u>Premiums</u>	<u>Claims Incurred</u>	<u>Ratio</u>
2005*	\$31,193,075	\$27,775,260	89.04%
2006	35,569,362	30,759,431	86.48%
2007	39,407,949	34,718,176	88.10%
2008	43,022,520	38,500,486	89.49%
2009	39,473,685	34,885,044	88.38%
2010*	35,738,680	30,743,663	86.02%

\*As determined by Examination.

## REINSURANCE

The Company retains 100 percent of its contractual risks. There were no assumed or ceded reinsurance agreements in effect during the examination period.

The Company is not required to participate in the Idaho Small Employer and Idaho Individual High Risk Reinsurance Programs.

## INSURANCE PRODUCTS AND RELATED PRACTICES

### Policy Forms and Underwriting Practices

The Company offers a group dental coverage in Idaho only. A listing of subscriber policy forms and the Certificate and Summary Plan (given to each subscriber) filed with the Department of Insurance was compared to the forms provided to the examiners by the Company without exception.

The Company's issuing procedures concerning new and renewal contracts appeared to be timely handled. The policyholder files were examined for the Company's treatment of additions and deletions to the original policy with no anomalies noted. The issuing agents' appointments were verified and the proposed premiums were examined without exception.

### Treatment of Policyholders

#### Claims

A sample of the claims paid during the year 2010 was reviewed during the course of this examination. The review indicated that the claims were being settled properly and that payments were being made in a timely manner.

#### Complaints

The Company maintains a complaint register pursuant to Section 41-1330, Idaho Code, that was reviewed during the examination. Supporting documentation of complaints received directly by the Company indicated appropriate follow-up and resolution had been achieved. Complaints filed with the Department were likewise adequately resolved.

A review of the Company's fraudulent claim procedure indicated their compliance with Section 41-290, Idaho Code.

### Advertising and Sales Material

The Company utilizes marketing through television, radio, magazine, and newspaper, in addition to its website. All advertising materials, including flyers and multi-media venues, were reviewed and found to be in compliance with Idaho law. No deceptive or misleading information was identified.

## ACCOUNTS AND RECORDS

### General Accounting

The Company utilized MS Dynamics for its accounting functions and Proclaim/Prosales for its business operations. Proclaim/Prosales is custom software developed by the Company. Proclaim is used for all business processes, claims processing, billing, accounting, and financial reporting. The Company utilized the Windows operating system using a Microsoft SQL server.

The general ledger and supporting accounting records were maintained on a GAAP basis and then adjusted to a statutory basis of accounting through adjusting journal entries. The Annual Statements were compiled utilizing the MS Dynamics software package.

Pursuant to Section 41-3425, Idaho Code, the Company files its Annual Statements with the Idaho Department of Insurance on NAIC blanks. However, the Department does not require the Company to file quarterly statements on NAIC prescribed forms. Instead, quarterly financial statements prepared on a GAAP basis adjusted to statutory were filed with the Department. The Company is not required to file its financial statements with the NAIC.

### Independent Accountants

The annual independent audits for the years 2006 through 2010 were performed by Eide Bailly, Boise, Idaho. The financial statements in each report were on a statutory basis. There was some reliance on the 2010 audit report and workpapers in this examination of the Company.

### Actuarial Opinion

The actuarial items were calculated by the Company and reviewed by Scott M. Meyer, MAAA, associated with Delta Dental of Wisconsin, Stevens Point, WI. The actuary, using standard actuarial procedures, then determined the appropriate liabilities and issued a statement of opinion. The opinion stated that the amounts of the liabilities:

- a. meet the requirements of the insurance laws of Idaho;
- b. are computed in accordance with commonly accepted actuarial standards consistently applied and fairly stated in accordance with sound actuarial principles; and
- c. are based on actuarial assumptions relevant to contract provisions and appropriate to purpose for which the statement was prepared;

- d. make a good and sufficient provision for all unpaid claims and other actuarial liabilities of the Company under the terms of its contracts and agreements;
- e. are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end; and
- f. include appropriate provision for all actuarial items that ought to be established.

The identified actuarial items are listed as follows:

A. Claims unpaid (Page 3, Line 1)	\$1,868,076
B. Accrued medical incentive pool and bonus payments (Page 3, Line 2)	\$0
C. Unpaid claims adjustment expenses (Page 3, Line 3)	\$103,074
D. Aggregate health policy reserves (Page 3, Line 4) including unearned premium reserves, premium deficiency reserves and additional policy reserves from the Underwriting and Investment Exhibit – Part 2D	\$748,113
E. Aggregate life policy reserves (Page 3, Line 5)	\$0
F. Property/casualty unearned premium reserves (Page 3, Line 6)	\$0
G. Aggregate health claims reserves (Page 3, Line 7)	\$0
H. Any actuarial reserves and liabilities not included in the items above	\$1,567,728*
I. Specified actuarial items presented as assets in the annual statement.	
i. Not Applicable	

\* The actuary reviewed this amount for GAAP purposes. For statutory purposes this amount is \$0. The liability represents the IBNR for unpaid claims for the ASC contracts. However, NAIC SSAP 47, para 11 prohibits the accrual of loss reserves associated with uninsured plans.

#### SUBSEQUENT EVENTS

As noted earlier under *Articles of Incorporation and Bylaws*, subsequent to the examination period, effective May 20, 2011, the Director of the Idaho Department of Insurance approved the amended and restated Company's Bylaws.

Subsequent to the examination date, effective January 1, 2012, the Company converted from Proclaim/Prosales to ProClaim2. ProClaim 2 handles premium and cash receipts, claims, the 457 plans and the agents' commissions. During the first months of operation there were no major problems discovered with any of the converted data.

## FINANCIAL STATEMENTS

The financial section of this report contains the following statements:

- Assets as of December 31, 2010
- Liabilities, Surplus and Other Funds as of December 31, 2010
- Statement of Revenue and Expenses, For the Year Ending December 31, 2010
- Capital and Surplus Account, For the Year Ending December 31, 2010
- Reconciliation of Capital and Surplus, December 31, 2006 through December 31, 2010

ASSETS  
As of December 31, 2010

	<u>Per Company</u>	<u>Examination Adjustments</u>	<u>Per Examination</u>
Bonds	\$ 6,154,390	0	\$ 6,154,390
Preferred stock	395,502	0	395,502
Common stock	11,327,269	0	11,327,269
Real estate – occupied by the company	1,601,082	0	1,601,082
Real estate – held for sale (Note 1)	588,584	0	588,584
Cash or short-term investments	2,316,832	0	2,316,832
Deferred compensation plan (Note 2)	6,668,742	0	6,668,742
Investment income due or accrued	70,482	0	70,482
Uncollected premiums and agents' balances in the course of collection	782,622	0	782,622
Amounts receivable relating to uninsured plans	87,980	0	87,980
Electronic data processing equipment	27,409	0	27,409
Furniture and equipment	<u>305,188</u>	<u>0</u>	<u>305,188</u>
Totals	<u>\$30,326,082</u>	<u>\$ 0</u>	<u>\$30,326,082</u>

LIABILITIES, SURPLUS AND OTHER FUNDS  
As of December 31, 2010

	<u>Per Company</u>	<u>Examination Adjustments</u>	<u>Per Examination</u>
Claims unpaid	\$1,868,076	\$ 0	\$1,868,076
Unpaid claims adjustment expenses	103,074	0	103,074
Aggregate health policy reserves	748,113	0	748,113
Premiums received in advance	746,545	0	746,545
General expenses due or accrued	1,152,763	0	1,152,763
Amounts withheld or retained by company (Note 2)	<u>6,663,910</u>	<u>0</u>	<u>6,663,910</u>
Total liabilities	<u>\$11,282,481</u>	<u>\$ 0</u>	<u>\$11,282,481</u>
Unassigned funds (surplus)	<u>\$19,043,601</u>	<u>0</u>	<u>\$19,043,601</u>
Surplus as regards policyholders	<u>\$19,043,601</u>	<u>\$ 0</u>	<u>\$19,043,601</u>
Totals	<u>\$30,326,082</u>	<u>\$ 0</u>	<u>\$30,326,082</u>

STATEMENT OF REVENUE AND EXPENSES  
For the Year Ending December 31, 2010

	<u>Per Company</u>	<u>Exam Adjustment</u>	<u>Per Examination</u>
Net premium income	\$35,738,680	\$ 0	\$35,738,680
Change in unearned premium reserve	0	0	0
Fee-For-Service	0	0	0
Risk revenue	0	0	0
Aggregate write-in for other health revenue	0	0	0
Aggregate write-in for non-health revenues	<u>0</u>	<u>0</u>	<u>0</u>
Total Revenue	<u>\$35,738,680</u>	<u>0</u>	<u>\$35,738,680</u>
Hospital and Medical:			
Hospital/medical benefits	30,743,663	0	30,743,663
Other professional services	0	0	0
Outside Referrals	0	0	0
Emergency room and out-of-area	0	0	0
Prescription drugs	0	0	0
Aggregate write-in for other hosp/medical	0	0	0
Incentive pool, withhold adj-bonus amounts	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal	30,743,663	0	30,743,663
Less:			
Net reinsurance recoveries	<u>0</u>	<u>0</u>	<u>0</u>
Total Hospital and medical	30,743,663	0	30,743,663
Non health claims (net)	0	0	0
Claims adjustment expenses	948,444	0	948,444
General administrative expense	3,430,101	0	3,430,101
Increase in reserves for life/A&H contracts	<u>0</u>	<u>0</u>	<u>0</u>
Total underwriting deductions	35,122,208	0	35,122,208
Net underwriting gain or (loss)	<u>616,472</u>	<u>0</u>	<u>616,472</u>
Net investment income	422,236	0	422,236
Net realized capital gains	<u>71,673</u>	<u>0</u>	<u>71,673</u>
Net Investment gains (losses)	493,909	0	493,909
Net gain or (loss) agts' or prem balances	0	0	0
Aggregate write-in other income or expense	763	0	763
Net income or (loss after capital gains and before all other federal income taxes	<u>1,111,144</u>	<u>0</u>	<u>1,111,144</u>
Federal and foreign income taxes incurred	<u>0</u>	<u>0</u>	<u>0</u>
Net Income (Loss)	<u>\$1,111,144</u>	<u>\$0</u>	<u>\$1,111,144</u>

CAPITAL AND SURPLUS ACCOUNT  
For the Year Ending December 31, 2010

	Per <u>Company</u>	Examination <u>Changes</u>	Per <u>Examination</u>
Surplus as regards policyholders, December 31, 2009	\$17,549,028	\$ 0	\$17,549,028
<u>GAINS AND (LOSSES) IN SURPLUS</u>			
Net income	\$1,111,144	\$ 0	\$1,111,144
Change in unrealized gains or (losses)	1,313,371	0	1,313,371
Change in net deferred income tax	0	0	0
Change in nonadmitted assets	(929,939)	0	(929,939)
Change in surplus notes	0	0	0
Rounding	<u>(3)</u>	<u>0</u>	<u>(3)</u>
Change in surplus as regards policyholders for the year	\$1,494,573	\$ 0	\$1,494,573
Surplus as regards policyholders, December 31, 2010	<u>\$19,043,601</u>	<u>\$ 0</u>	<u>\$19,043,601</u>

RECONCILIATION OF CAPITAL AND SURPLUS ACCOUNT  
December 31, 2006 through December 31, 2010

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Capital and Surplus, Beginning of Year	\$11,141,115	\$13,648,633	\$15,194,678	\$14,135,188	\$17,549,028
Net income	1,679,563	2,168,830	844,106	890,675	1,111,144
Change in unrealized gains or (losses)	789,364	(720,677)	(1,810,742)	2,498,828	1,313,371
Change in net deferred income tax	0	0	0	0	0
Change in nonadmitted assets	(48,163)	(354,890)	1,147,496	24,336	(929,939)
Other adjustments	86,754	452,782	(1,240,350)	0	0
Rounding	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>(3)</u>
Net Change in Capital and Surplus	2,507,518	1,546,045	(1,059,490)	3,413,840	1,494,573
Capital and Surplus, End Of Year	<u>\$13,648,633</u>	<u>\$15,194,678</u>	<u>\$14,135,188</u>	<u>\$17,549,028</u>	<u>\$19,043,601</u>

NOTES TO THE FINANCIAL STATEMENTS

Note (1) – Properties held for sale \$ 588,584

On January 22, 2009, the Department of Insurance granted a waiver of the five year limit under Section 41-729, Idaho Code, in which to dispose of real estate for purposes of the property held for future sale. The Department determined that sufficient grounds existed to extend the time period for disposal to June 30, 2014. This determination allows property held for future sale to remain as an admitted asset in the Company's financial statements. The extension is effective June 30, 2009 until June 30, 2014.

Note (2) – Deferred Compensation \$6,668,742  
Amounts withheld or retained for the account of others 6,663,910

Activity in the Delta Dental Plan of Idaho, Inc. Code Section 457 Deferred Compensation Plan and the Delta Dental Rabbi Trust during 2010 was as follows:

Beginning balance at market, January 1, 2010	\$5,892,245
Contributions	187,392
Gain	781,386
Administrative fees	(8,792)
Distributions	<u>(183,489)</u>
Ending balance at market, December 31, 2010	<u>\$6,668,742</u>

The deferred compensation plan assets reconciled to the amounts withheld for others was as follows:

Code Section 457 Deferred Compensation Plan:	\$5,918,969
Executive Deferred Compensation Plan:	<u>749,773</u>
Total Deferred Comp Assets	\$6,668,742
Less benefit payable	<u>(4,832)</u>
Total amounts withheld for account of others	<u>\$6,663,910</u>

Delta Dental Plan of Idaho, Inc. Code Section 457 Deferred Compensation Plan

On April 7, 1990, the Company adopted The Section 457 Prototype Plan and Trust under Internal Revenue Code Section 457. The deferred compensation plan, which was effective January 1, 1990, was adopted for the benefit of participating dentists.

Due to revisions in the law which have occurred since the Plan's establishment, and the change of custodians (from WestOne Bank to Wells Fargo, formerly First Security) and investment vehicles, the Plan was restated effective January 1, 1998, as the Delta Dental of Idaho, Inc. Code Section 457 Deferred Compensation Plan. The restated Plan was approved by the Board of Directors on September 13, 1997.

The Plan, as restated, was amended effective November 1, 1999 to provide for distributions to alternate payees under Plan-approved domestic relations court orders. The amendment was approved by the Board of Directors on April 15, 2000. The Plan was again amended and restated effective January 1, 2004 to comply with changes to IRS Code Section 457(b).

Pursuant to the Plan, the Company reduces its claim payments to participating dentists and invests the withheld funds, plus related interest, as directed by the dentist and allowed by the Plan for future

distribution to the dentists. Under the amended and restated Plan effective January 1, 2004, the reductions may not exceed the lesser of \$14,000 or 100 percent of the annual payments to the dentist. The deferred compensation, however, is not available to the dentists until there is a separation from service or an unforeseeable emergency, as defined in the plan document.

Subsequent to the examination period, the plan was amended to allow executives of the Company to contribute. No contributions, matching or otherwise, will be made by the Company.

#### Delta Dental Rabbi Trust

On December 1, 2003, the Company created the Delta Dental Rabbi Trust, in connection with establishing a deferred compensation plan for the benefit of a highly compensated employee. Such employee, as designated by the Board of Directors, was entitled to participate in the Plan as a beneficiary of the Delta Dental Rabbi Trust. The trust was established under the Trust Agreement between the Company, as grantor, and Farmers and Merchants State Bank as Trustee. The Plan document was executed December 1, 2003.

Under both of the above plans (the Section 457 and the Rabbi trust), all assets contributed to the Plans and all earnings thereon are subject to the claims of the general creditors of the Company. In that regard, the plans' assets and liabilities are reported on the Company's balance sheet as detailed earlier in this Note.

### SUMMARY, COMMENTS AND RECOMMENDATIONS

#### Summary

The results of this examination disclosed that as of December 31, 2010 the Company had admitted assets of \$30,326,082, liabilities of \$11,282,481, and surplus of \$19,043,601. This amount meets minimum requirements as determined by the Idaho Department of Insurance.

#### Comments and Recommendations

##### Page

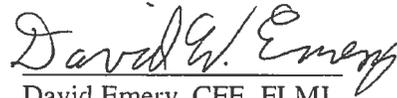
8 It is recommended that the Company come into compliance with Idaho Insurance Code sections 41-3413(1)(a), 41-3415(2) and 41-3406(1) by either terminating the Avesis contract or assigning the Avesis contract to a subsidiary, or to otherwise restructure the relationship with Avesis or the Company's corporate structure so as to cause the Company to be in compliance.

CONCLUSION

The undersigned acknowledges the assistance and cooperation of the Company's Board, officers and employees in conducting the examination.

In addition to the undersigned, Kelvin Ko, CFE, of the Idaho Department of Insurance, participated in the examination.

Respectfully submitted,

A handwritten signature in cursive script that reads "David G. Emery".

David Emery, CFE, FLMI  
Senior Insurance Examiner  
State of Idaho  
Department of Insurance

AFFIDAVIT OF EXAMINER

State of Idaho  
County of Ada

David W. Emery, being duly sworn, deposes and says that he is a duly appointed Examiner for the Department of Insurance of the State of Idaho, that he has made an examination of the affairs and financial condition of the Delta Dental Plan of Idaho, Inc. for the period from January 1, 2006 through December 31, 2010, including subsequent events, that the information contained in the report consisting of the foregoing pages is true and correct to the best of his knowledge and belief, and that any conclusions and recommendations contained in the report are based on the facts disclosed in the examination.

*David W. Emery*

David W. Emery, CFE, FLMI  
Examiner-in-Charge  
Department of Insurance  
State of Idaho

Subscribed and sworn to before me the 23<sup>rd</sup> day of May, 2012 at Boise, Idaho



*John C. Keenan*

Notary Public

Commission Expires: 30 Oct 2013

**EXHIBIT B**



June 25, 2012

William R. Michels, MBA, CPA, CFE  
Deputy Chief Examiner  
Idaho Department of Insurance  
700 West State Street  
P.O. Box 83720  
Boise, ID 83720-0043

Dear Bill:

This letter is in response to the PDF file of the Report of Examination we received on May 25, 2012.

Delta Dental Plan of Idaho, Inc. ("Company") hereby acknowledges receipt of the Report of Examination of Delta Dental Plan of Idaho, Inc. as of December 31, 2010, verified by the examiner-in-charge as of the 25th day of May, 2012 ("Report") and the Company's right under Idaho Code § 41-227(4) to a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the Report. As you know, the Company disagrees with the examiner's findings, conclusions and recommendation relating to the Company's relationship with Avesis Third Party Administrators, Inc. (See pages 6-8 and 19 of the Report.) We have been engaged in written communications and discussions with Department personnel concerning those issues. Copies of pertinent written correspondence are attached.

Nevertheless, we note that the examiner suggested that his concerns could be alleviated by assigning the Avesis contract to a subsidiary or otherwise restructuring the relationship with Avesis or the Company's corporate structure. We have requested a meeting with you to discuss your recommendation to resolve the issue by restructuring and look forward to meeting with you tomorrow, June 26<sup>th</sup>.

In the meantime, in keeping with the statutory procedures in Idaho Code § 41-227, Delta Dental requests that the examination report be modified in two respects before it is adopted by order of the Director:

1. We are advised by legal counsel that the examination report is presumptive evidence as to material facts stated therein, Idaho Code § 41-227(7). We believe that the examiner's recitation of the terms of the Avesis Marketing and Third Party Administration Agreement (on pages 6-7 of the Report) is not precisely accurate nor does it reflect the parties' interpretation and actual implementation of the contract. It is therefore requested that section of the Report be modified in accordance with the attached markup.
2. In addition, based on the Company's commitment to work with the Department to implement the examiner's recommendation to spin off the Avesis business to a for-profit subsidiary or otherwise restructure the relationship with Avesis or the Company's corporate structure, the Company

Jean De Luca  
President and Chief Executive Officer

DELTA DENTAL OF IDAHO  
555 E. Parkcenter Boulevard  
Boise, Idaho 83706

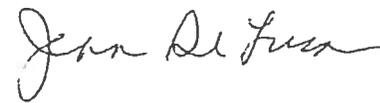
Telephone: 208-489-3522  
Cell: 208-867-5841  
Fax: 208-489-3521  
jdeluca@deladentalid.com

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requests that the examiner's legal analysis and legal conclusions (on pages 6-8 of the Report) and his related recommendations (on pages 8 and 19 of the Report) be deleted from the Report prior to issuance of the Director's adoption order. Pursuant to the examiner's request, we have signed and enclose a Waiver based on the assumption that the Director will incorporate the Company's requested modifications into the examination report that is adopted by the Director's order. In the alternative, it is requested that this letter, and its enclosures, be appended to the Report as adopted by the Director, to ensure that the public record includes the Company's comments, including analysis of the legal issues on behalf of the Company.

We appreciate your assistance with this matter and look forward to resolving this matter.

Sincerely,



Jean De Luca  
President and CEO

cc: William C. Roden, Attorney-at-Law  
Richard Riley, Hawley Troxell

Jean De Luca  
President and Chief Executive Officer

DELTA DENTAL OF IDAHO  
555 E. Parkcenter Boulevard  
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jdeluca@deltadentalid.com

## MARKUP OF EXCERPT FROM PAGES 6-8 OF EXAMINATION REPORT

### Contracts and Agreements

The Company had the following agreements and/or arrangements in effect at December 31, 2010:

#### Marketing and Third Party Administration Agreement

The Company entered into the above referenced agreement with Avesis Third Party Administrators, Inc. (Avesis) on December 4, 2009 whereby:

- Delta will act as a General Agent for Avesis to distribute vision and hearing plans, underwritten by Fidelity Security Life Insurance Company.
- Such plans will be sold as the “*Delta Vision Powered by Avesis*” and/or “*Hearing Program by Delta Dental of Idaho Powered by Avesis.*”
- ~~Delta may only market and sell Avesis voluntary hearing plans when the plan is sold with a Delta voluntary dental plan (all members selecting voluntary dental must also select voluntary hearing).~~ Employer paid hearing plans may be sold on a stand-alone basis or with a Delta employer paid or voluntary dental plan basis. Delta may only market and sell Avesis voluntary (i.e., (employer does not pay) hearing plans when the plan is sold with a Delta voluntary dental plan. The Avesis contract states that “voluntary hearing can only be sold if it is embedded with voluntary dental ONLY.” If a group chooses to purchase a voluntary hearing plan it must pair it with (i.e. embed it in) voluntary dental coverage. It does NOT mean that all of Delta Dental voluntary dental plan members must also subscribe to the Avesis hearing plan.
- ~~Delta assumes responsibility for marketing.~~ Dental provides existing groups and producers with a brochure describing the vision programs and hearing programs, which the producers then use in marketing to all Delta Dental’s current or prospective and all current Delta program clients and producer customers.
- All marketing material must first be approved by Avesis in writing.
- ~~Delta assumes responsibility for.~~ Dental collects paper enrollment of new clients forms from the producers and reviews them for completeness before sending to Avesis.
- Avesis is responsible for the network of vision and hearing providers.
- Avesis is responsible for the group premium vision and/or hearing billing/collection function.
- Delta receives a sales and marketing fee which is a percent of gross premiums collected.

The risk-of-loss on the vision and hearing insurance product(s) is underwritten by *Fidelity Security Life Insurance Company*. Avesis holds an Idaho TPA license and Fidelity Security holds an Idaho disability (excluding managed care) license.

~~Under this agreement, Delta is functioning as a paid producer, both soliciting and selling the Fidelity policies. The professional service corporation business model contemplated by Chapter 34, Title 41, however, makes no provision for a service company to directly sell another insurance company's policies to its subscribers.~~

~~The statutory language of Title 41, Chapter 34 instead prescribes the use of:~~

~~1) a "service agreement" between a service corporation and a licensee under which the licensee agrees to render all or part of one or more health care services to subscribers of the service corporation. (see § 41-3403(5), Idaho Code); and~~

~~2) a "subscriber's contract" between the service corporation and its subscriber under which all or part of one or more health care services is to be rendered to or on behalf of the subscriber by a licensee that has entered into a service agreement with such corporation covering such services (see § 41-3403(6)), Idaho Code).~~

~~The service corporation must have privity of contract with both of the above two (2) distinct elements, the service agreement and the subscriber contract. The Avesis/Delta agreement, however, lacks both of the aforementioned required distinct elements.~~

~~Further, Delta's Articles of Incorporation limit its activities to strictly dental by stating: "The category of participant licensee services to be provided is dentists." [Underline emphasis added.]~~

~~Therefore, the agreement with Avesis, where Delta is acting as a paid producer by soliciting and/or selling the Fidelity Security Life Insurance Company hearing and vision policies to its subscribers, is in violation of the Idaho Insurance Code, including the following Idaho Code Sections:~~

~~§ 41-3413(1)(a):~~

~~(1) — A professional service corporation shall have the right to provide to its subscribers part or all of the following services and benefits only:~~

~~(a) Professional services furnished to the subscriber by one or more specified categories of participant licensees... [underline emphasis added]~~

~~§ 41-3415(2):~~

~~(2) — Each such *service agreement* shall require the participant licensees to furnish to subscribers of the service corporation the professional services which are, *under the subscriber's contract*, to be furnished by participant licensees; and this obligation so to furnish such service, *as provided for in the subscriber's contract*, shall be a direct obligation of the participant licensees to the subscribers as well as to the service corporation. [italics emphasis added]~~

~~§ 41-3406(1):~~

~~The articles of incorporation shall specify the category or categories of participant licensee services to be provided by a professional service corporation;~~

~~Therefore, it is recommended that the Company come into compliance with the above cited Idaho Insurance Code sections by either terminating the Avesis contract or assigning the Avesis contract to a subsidiary, or to otherwise restructure the relationship with Avesis or the Company's corporate structure so as to cause the Company to be in compliance.~~

**Format**

# Delta Dental Plan of Idaho, Inc.

555 E. Parkcenter Blvd.  
Boise, Idaho 83706

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## WAIVER

In the matter of the Report of Examination as of December 31, 2010, of:

Delta Dental Plan of Idaho, Inc.  
555 E. Parkcenter Blvd.  
Boise, Idaho 83706

The Company hereby acknowledges receipt of the above-described Report of Examination verified as of the 25<sup>th</sup> day of May 2012 ("Report") and the Company's right under Idaho Code § 41-227(4) to a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the Report. This Waiver accompanies the Company's written submission in the form of a letter dated June 25, 2012 from the Company's CEO and President, Jean De Luca ("Submission"). The Submission includes the Company's request that, for the reasons stated therein, the Report be modified by inclusion of the Company's comments concerning the Avesis contract as set forth in an attachment to the Submission and that the examiner's legal analysis, conclusions and recommendation be deleted from the Report. (As so modified, the examination report is referenced in this Waiver as the "Modified Report".)

By executing this Waiver, the Company hereby consents to the immediate entry of a final order by the Director of the Department of Insurance adopting the Modified Report and waives:

1. any right to request a hearing on the Modified Report under Idaho Code §§ 41-227(5) and (6), 41-232(2)(b), or elsewhere in the Idaho Code; and
2. any right to seek reconsideration or appeal from the Director's order adopting the Modified Report, as provided by Idaho Code § 41-227(6) or elsewhere in the Idaho Code.

For clarity, if and to the extent the Director does not adopt the modifications requested in the Submission, the Company does not, by executing this document, waive any rights with respect to the Report under the Idaho Insurance Code.

Dated this 25<sup>th</sup> day of June 2012.

DELTA DENTAL PLAN OF IDAHO, INC.

By: Jean De Luca  
Jean De Luca, President and CEO

*State of Idaho*  
**DEPARTMENT OF INSURANCE**

C.L. "BUTCH" OTTER  
Governor

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WILLIAM W. DEAL  
Director

VIA E-MAIL: [jdeluca@deltadentalid.com](mailto:jdeluca@deltadentalid.com)

February 16, 2012

Jean De Luca, President & CEO  
Delta Dental Plan of Idaho, Inc.  
555 East Parkcenter Blvd.  
Boise, Idaho 83706

RE: Avesis Contract / Vision and Hearing Plan

Dear Ms. De Luca:

It is the understanding of the Idaho Department of Insurance that Delta Dental entered into a profit/loss sharing arrangement with Avesis (and may be entering into additional contracts with Avesis), whereby Delta Dental will sell certain vision and hearing insurance products in association with Avesis, with said plans to be underwritten by Fidelity Security Life Insurance Company, of Kansas City, Missouri. The Department is of the conclusion that Delta Dental does not have the statutory or corporate authority to engage in such activity.

As you know, Delta Dental is organized and incorporated as nonprofit professional service corporation under title 41, chapter 34. Delta Dental's Articles of Incorporation (as approved by the Director in 1992) provide as follows:

The purpose for which corporation is organized are the establishment and operation of a nonprofit service corporation and for the transaction of any and all lawful business for which profession service corporations may be incorporated under the Idaho Hospital and Professional Service Corporation Act, the Idaho Nonprofit Corporation Act and under the laws of the State of Idaho. The category of participant licensee services to be provided is dentists.

As required by Idaho Code § 41-3406(1), the Articles of Incorporation specify the category of participant licensee services to be provided by Delta Dental as a profession service corporation, to wit "dentists."

A professional service corporation is "one so providing principally health care services by one or more categories of participant licensees, as defined in subsection (9) of this section. Such service corporations may also provide for materials customarily

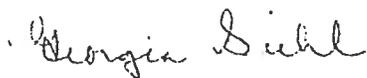
Delta Dental  
February 16, 2012  
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dispensed or furnished in connection with the services of the licensee." See Idaho Code § 41-3403(3). Health care services means "any services rendered to an individual for diagnosis, relief, or treatment of any injury, ailment or bodily condition." See Idaho Code § 41-3403(1).

Nothing in this statutory scheme established the authority for Delta Dental to sell another insurance company's products and/or share in the profit from such sales as it has apparently been doing. Delta Dental is limited, by its own choice, to providing dental health care services through participating dentist and may provide material customarily dispensed or furnished in connection with the services of a dentist. To sell such services, Delta Dental may retain and/or appoint producers and provide for commission to be paid to the producers. But Delta Dental cannot also sell the products of another unrelated entity, especially where the unrelated entity is not a licensee under Idaho Code § 41-3403(9) that provides health care services as defined in Idaho Code § 41-3403(1). Neither Avesis nor Fidelity are chapter 34 licensees. Neither Avesis nor Fidelity appear to provide dental health care services or related material. Avesis is a TPA and Fidelity an insurance company. Delta Dental itself is not authorized to provide either vision or hearing health care services under its own Articles of Incorporation, as approved. For Delta Dental to engage in this activity, it must first amend its articles of incorporation following approval from the director if it intends to stay within the confines of Idaho Code title 41, chapter 34. Even then, under Idaho Code title 41, chapter 34 it could only extend its services to vision care through a vision care provider. Hearing services are outside the scope of Idaho Code § 41-3403(9). Nor is there any authority allowing Delta Dental to sell insurance products of a non-licensee/provider such as Avesis or Fidelity. To do so, Delta Dental would have to reorganize outside of the confines of title 41, chapter 34, Idaho Code.

The Department is therefore concerned about the contractual relationship with Avesis that appears to be contrary to Idaho Code and Delta Dental's Articles. Until Delta Dental has addressed issues identified in this letter it should refrain from operating contrary to its authority under title 41, chapter 34, Idaho Code. If you would like to discuss this in greater detail or if you believe our analysis is incorrect, we would be pleased to meet with you to discuss this in greater detail.

Sincerely,



Georgia Siehl, CPA, CFE  
Bureau Chief, Chief Examiner  
Idaho Department of Insurance

MEMORANDUM RE: PROFESSIONAL SERVICE CORPORATIONS

Chapter 34, Title 41, Idaho Code

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Date: April 5, 2011

From: Bill Roden, on behalf of Delta Dental of Idaho

To: Richard Burleigh via e-mail: [richard.burleigh@doi.idaho.gov](mailto:richard.burleigh@doi.idaho.gov)

Tom Donovan via e-mail: [Tom.Donovan@doi.idaho.gov](mailto:Tom.Donovan@doi.idaho.gov)

Re: Response to Letter from DOI to Delta Dental of Idaho, dated February 16, 2012.

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**BACKGROUND:**

Delta Dental Plan of Idaho, Inc. (Delta), is an Idaho corporation, incorporated as a non-profit, non-stock corporation pursuant to the provisions of the Idaho Non-Profit Corporation Act. Originally incorporated in 1971, its Articles of Incorporation have been amended, the most recent Amendment being accomplished in 1992, a copy of which, together with approval of the Director Harry C. Walrath, Idaho Department of Insurance, is attached to this analysis.

The purposes for which Delta is organized, according to its Amended Articles of Incorporation, are "the establishment and operation of a nonprofit professional service corporation and for the transaction of any and all lawful business for which professional service corporations may be incorporated under the Idaho Hospital and Professional Service Corporation Act (*Chapter 34, Title 41, Idaho Code*), the Idaho Nonprofit Corporation Act, and under the laws of the State of Idaho." [Italicized portion added]<sup>1</sup>

Delta was issued a Certificate of Approval, by the Director of the Department of Insurance, as of February 21<sup>st</sup>, 1973, which was reissued on July 7, 2004, and subsequently amended and reissued on March 13, 2012. The Certificate of Approval, dated March 13, 2012, recites the following:

Delta Dental Plan of Idaho, Inc., a Hospital/Professional Service Corp. domiciled in Idaho, subject to the provisions of its Articles of Incorporation, and having presented

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<sup>1</sup> There is no Act titled by Idaho law as the Idaho Hospital and Professional Service Corporation Act. It is assumed that the reference to the Idaho Hospital and Professional Service Corporation Act is referring to Chapter 34, Title 41, Idaho Code.

satisfactory evidence of compliance with the requirements of Title 41, Chapter 34, Idaho Code regulating the operation of hospital/professional service corporations in the State of Idaho, this Certificate of Authority is hereby granted to said Hospital/Professional Service Corporation to transact such business in the State of Idaho.”

In 2009, DDPI entered into an agreement with Avesis Third Party Administrators, Inc. (Avesis), to act as a general agent for Avesis to distribute vision and hearing plans underwritten by Fidelity Security Life Insurance Company (FSL) The plans are marketed as “DeltaVision and Hearing Programs Powered by Avesis.” Consumer materials show that such plans are underwritten by Fidelity Security Life Insurance Company, Kansas City, MO.

Delta’s role in the Avesis program is administrative, and to also provide Delta’s endorsement of the Avesis vision and hearing plans to Delta’s existing and potential subscriber client base. At the administrative level, Delta is responsible for marketing the Avesis programs to Delta’s prospective and current dental program clients and producers. Delta assumes responsibility for enrollment of new Avesis/FSL clients, including printing of enrollment applications, attendance at enrollment meetings, processing of applications and submission of initial group enrollment to Avesis. Delta, in payment for such services, receives a service fee in the form of a percentage of gross fees from sales of the plans in Idaho.

Delta does not:

- (a) Enter into agreements or have any contractual relationship with purchasers of benefit plans pursuant to Avesis vision or hearing programs.
- (b) Engage in direct sales of Avesis vision or hearing programs nor “share in the profit” from sales of Avesis products. (All sales of Avesis products are made by licensed producers appointed as agents for FLS)
- (b) Enter into service agreements with vision or hearing health care professional personnel providing services to members of the Avesis vision or hearing programs.
- (c) Collect or disburse fees paid by Avesis plan participants.
- (d) Accept or deny benefit claims made pursuant to the Avesis vision or hearing plans.

**ISSUE:**

The Department of Insurance has raised the question, initially based on the facts surrounding Delta’s business arrangement with Avesis and FLS, but also as to a definitive survey of Delta’s corporate authority, as well as its statutory authority, to engage in businesses not totally devoted

to the provision of prepaid health service plans providing dental services to the plan's subscribers.

ANALYSIS:

1. *Corporate Authority:*

The articles of incorporation, as amended in 1992, and approved by the Director of the Idaho Department of Insurance, provide for a corporation organized for the transaction of any and all lawful business for which a professional service corporation may be incorporated under

- (a) the Idaho Hospital and Professional Service Corporation Act;<sup>2</sup>
- (b) the Idaho Nonprofit Corporation Act, and
- (c) under the laws of the State of Idaho.

Section 41-3406, Idaho Code, requires that the

“service corporation be formed as a nonprofit, non-stock corporation consistent with the applicable requirements of this chapter under the statutes of Idaho governing the formation of nonprofit, non-stock corporations in general.”

The only additional information required by §41-3406, Idaho Code, is that the articles of incorporation specify the category or categories of participant licensee services to be provided by a professional service corporation. §41-3406, Idaho Code, requires that the formation of the corporation be “consistent” with the applicable requirements of Chapter 34, Title 41. It does not require that that corporate authority of corporation be limited to functions set forth in that Chapter.

The Idaho Nonprofit Corporation Act, empowers a nonprofit corporation with the same power as an individual to do all things necessary and convenient to carry out its affairs, including, *inter alia*, to carry out a business and to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation. [§30-3-24, Idaho Code]

Delta's Articles of Incorporation comply with the provisions of §41-3406, Idaho Code, and have been approved by the Department, as being “consistent” with the requirements of Chapter 34, Title 41, Idaho Code.

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<sup>2</sup> Ibid.

*2. Statutory Authority/Limitations Pursuant to Chapter 34, Title 41, Idaho Code.*

Delta has been issued a Certificate of Authority to transact business authorized by Chapter 34, Title 41, Idaho Code. The Certificate of Authority is just what it says it is-- a grant of authority. It is not a limiting document, except to the extent that it requires that the functions of providing specified health care services as a professional service corporation, be provided in accordance with Chapter 34, Title 41, Idaho Code. To the extent that Delta is not providing health care services pursuant to contracts between Delta and participant licensees nor pursuant to contracts between Delta and subscribers, Chapter 34, Title 41, Idaho Code, is simply not applicable to such activities. The Certificate of Authority is the special authority granted Delta authorizing the provision of prepaid dental services in accordance with Chapter 34--it does not limit Delta's authority to engage in other businesses nor can we find existing statutory or other legal authority authorizing the Director to do so.

§34-3413(2), Idaho Code, specifically clarifies that the recitation of services which may be provided to the service corporation's subscribers, is not intended to restrict other activities of the corporation. Subsection (1) of §34-3413, delineates services and benefits which a professional service corporation may provide to its subscribers. However, to make it clear that such delineation of authorized services and benefits to subscribers is not to be considered a limitation on other business endeavors of the corporation, subsection (2), §34-3413, Idaho Code, provides as follows:

“(2) This section shall not be deemed to prohibit such a corporation from acting as compensated servicing agent as to health care services to be provided by any public agency, or under agreements between other parties not solicited by such corporation.”

A comparable provision is also set forth in §34-3414(2), Idaho Code, setting forth the services that may be provided by Hospital service corporations.

The provisions of §34-3525, Idaho Code, relating to producers, or persons representing a service corporation in the solicitation and negotiation of subscriber's contracts, recognizes that producers (including persons representing service corporations in the solicitation and negotiation of subscribers contracts) must be licensed as producers of the service corporation, but specifically provides:

“such persons shall not be prevented from being licensed as a producer and appointed as an agent for a life insurer or insurers under chapter 10, title 41, Idaho Code, and being concurrently licensed as a producer for such a service corporation.”

§41-3406(4), Idaho Code, recognizes that a service corporation's articles of incorporation may also be broader than, and not limited to, the functions of a service corporation, and provides as follows:

“(4) Such a service corporation heretofore or hereafter formed or converted to a nonprofit mutual insurer pursuant to statute, if within its corporate powers as stated in its articles of incorporation, may also operate as a health maintenance organization and exercise all of the powers and fulfill all applicable requirements under house bill 394, second regular session, forty-second Idaho legislature.<sup>3</sup> If the corporation is to operate concurrently as both a service corporation and a health maintenance organization, the health maintenance organization operations may be conducted through a separate division or department, which division or department shall operate and be treated as a separate entity for the purpose of such laws.” [Underlining added]

In addition, it is important to consider the provisions of §41-3412, Idaho Code, which provides for the suspension or revocation of a certificate of authority. Such action may only be taken if the Director determines that the service corporation is no longer qualified for a certificate of authority, or on applicable grounds set forth in §41-327, Idaho Code. There are no provisions of §41-327, Idaho Code, that would indicate that the endorsement of products of a regulated insurer, or the performance of administrative duties on behalf of such an insurer, by a holder of a certificate of authority pursuant to Chapter 34, Title 41, Idaho Code, constitute grounds for disciplinary action. Neither has there been any suggestion that such provisions have been violated by Delta.

#### CONCLUSION:

The issues raised by Ms. Siehl, on behalf of the Department of Insurance, appear to be issues not previously addressed by the Department with reference to corporations qualifying as professional service corporations, but engaging in an administrative or supportive role on behalf of the business of insurers regulated under the general insurance laws of the Idaho. As a case of first impression within the Department, it is respectfully suggested that the views expressed in the Department's letter dated February 16<sup>th</sup>, 2012, be very carefully and thoughtfully reconsidered.

The concept that a Certificate of Authority, whether issued to a corporation engaging in the provision of health care services pursuant to Chapter 34, Title 41, Idaho Code, or to an insurer holding a Certificate of Authority under other provisions of Title 41, is a document

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<sup>3</sup> H 394, 2<sup>nd</sup> Regular Session, 42<sup>nd</sup> Legislature is codified as §§41-3406, 41-3901, 41-3902, 41-3904-41-3906, 41-3909-41-3911, and 41-3914 to 3922.

limiting the extent of business activities that an insurer may engage in, absent clear and explicit statutory limitations, has far reaching implications. Such a concept should not be lightly endorsed without a full examination of all statutes relative the organization and authority of all insurers subject to regulation by the Department.

Our examination of the statutes, rules and practices established for corporations providing services regulated by Chapter 34, have not found any of the restrictions that justify the conclusions reached in the referenced letter to Delta Dental. Delta Dental of Idaho will continue to comply with all statutory requirements of the applicable statutes. We assume that the Department will continue its regulatory role in supervising the activities of Avesis and Fidelity Security Life Insurance Company, relating to the vision and hearing products being offered on their behalf in Idaho.

If clarification of the respective roles of the involved parties is necessary or there are other specific regulatory issues that need to be examined, it is Delta Dental of Idaho's intent to fully work with the Department to resolve those issues. But, our examination of the statutes and circumstances of the present issue does not find justification for the preliminary departmental conclusion that Delta Dental of Idaho lacks the statutory or corporate authority to engage in the activities set forth in this analysis.

If further discussion or exploration of the issue would be helpful, we would like to meet at your convenience for that discussion. If you have further research or interpretation of specific statutory provisions, we would appreciate the opportunity to further consider the rationale for the preliminary conclusions made on behalf of the Department.

Sincerely,



William C. Roden



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

VIA E-MAIL: [broden1@qwestoffice.net](mailto:broden1@qwestoffice.net)

April 17, 2012

William C. Roden  
559 West Bannock Street, Suite B  
P.O. Box 2110  
Boise, Idaho 83701

RE: Avesis Agreement / Vision and Hearing Plan

Dear Bill:

This letter is in response to your email and attached memorandum dated as of April 5, 2012. We carefully reviewed the email and memorandum and continue to have concerns that Delta Dental is acting beyond the authorized scope of a professional service corporation organized under title 41, chapter 34, Idaho Code, with regard to its contract with Avesis Third Party Administrator ("Avesis").

Initially, with regard to your email, you indicate that Delta is not "selling" the Avesis vision and hearing plans. We do not fully understand the distinction you are attempting to make with this position. The Marketing and Third Party Administration Agreement dated as of December 4, 2009 (the "Agreement") repeatedly indicates that Delta Dental is marketing and selling the Avesis plans. Delta Dental is paid 5.5% of the gross premium collected for "[Delta Dental] sales and marketing fee." As you indicate in your memorandum, the Agreement provides that Delta Dental "assumes responsibility for enrollment of the new Avesis/FSL client, including printing of enrollment applications, attendance at enrollment meetings, processing of applications and submission of initial group enrollment of Avesis." All of this appears to point to the conclusion that Delta Dental is actively selling the Avesis products to the Delta Dental subscribers.

Perhaps this matter can be cleared up by explaining how the Delta Dental producers that are directly employed by Delta Dental are compensated for the sale of Avesis products. We understand from the Agreement that Avesis may pay External Producers up to a 10% commission on premiums collected. Please provide us with any documentation that sets forth how the internal Delta Dental employed producers are paid for their sales of the Avesis products. We would also be interested in a better explanation of what activities Delta Dental is engaged in and how it is paid, whereby it receives 5.5% of the gross collected premiums, and an explanation of how this activity does not constitute "sales."

William C. Roden  
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You also suggest that an addendum to the Agreement might be in order to clarify the obligations of Delta Dental under the Agreement. We would like to see a draft of any proposed addendum.

With regard to your memorandum included with the April 5, 2012 email, we have a number of comments and observations.

First, it is noted that Delta Dental's approved Articles of Incorporation ("Articles") do not limit Delta Dental to activity that a professional service corporation is permitted to engage in under title 41, chapter 34, Idaho Code. Your position is that a corporation may be both a chapter 34 professional service corporation and an all-purpose corporation as otherwise permitted under the Idaho Code. Initially, the Department is unlikely to approve such articles of incorporation that attempt to be all things. Such articles of incorporation would not be deemed "consistent" with the applicable requirements of chapter 34. However, a discussion at this time on what is or is not consistent is academic because it does not appear as if Delta Dental's Articles support the position the Delta Dental may operate outside the confines of chapter 34.

The Articles expressly state:

the purposes for which the corporation is organized are [1] the establishment and operation of a nonprofit professional service corporation, and [2] for the transaction of any and all lawful business for which a professional service corporation may be incorporated under the Idaho Hospital and Professional Service Corporation Act [Ch.34, T.41], the Idaho Nonprofit Corporation Act and under the laws of the State of Idaho. (Underlining and numbers added.)

Hence, by its own language, the Articles limit Delta Dental to those acts permitted under title 41, chapter 34, Idaho Code. The limiting statute in the list provided by the Articles is the Hospital and Professional Service Corporation Act. The intent of the Articles is not to simply create a nonprofit corporation organized under the laws of the state of Idaho. The Articles are quite specific that the intent is to establish a "professional service corporation." Under the laws of the state of Idaho, such corporations are controlled by title 41, chapter 34, and title 30, chapter 13. However, Delta Dental could not incorporate under title 30, chapter 13, because it is not that type of professional service corporation, (*i.e.*, a group of specific professionals, such as lawyers or architects or dentists, that incorporate so as to do business together). Consequently, the argument that Delta Dental is not limited by its Articles is incorrect, in the Department's view, based on the language of the Articles themselves.

The memorandum next argues that title 41, chapter 34, Idaho Code, does not limit the activity that Delta Dental may engage in if it is not providing permitted health services (*i.e.*, dentistry) to its subscribers. This position seems to ignore, or fails to properly

analyze, Idaho Code § 41-3413. Section 41-3413(1) expressly limits what services Delta Dental may provide to its subscribers.

Without addressing the limitations of § 41-3413(1), the memorandum asserts that Idaho Code § 41-3413(2) creates an escape hatch. This escape hatch is not as broad as asserted. As relevant to this issue, 41-3413(2) provides as follows:

(2) This section shall not be deemed to prohibit such a corporation from acting as a compensated servicing agent as to health care services to be provided ... under agreements between other parties not solicited by such corporation. (Underlining added.)

In applying this section, the initial question is what is a “servicing agent”? It is an undefined term. Logically, it could concern services provided only to other professional service corporations organized under title 41, chapter 34. For instance, Delta Dental could be the servicing agent for VSP, the only other chapter 34 professional service corporation, for those subscribers that they share. It is unlikely that Delta Dental could act as a servicing agent for a TPA such as Avesis since, in effect, that is the role of a TPA. Moreover, Delta Dental is only engaged in selling and marketing the Avesis products and has no other role. Delta Dental does not collect premiums or pay out benefits to Avesis customers. The language above might support the idea that a professional service corporation could engage in conduct as an administrator, but it does not suggest that such a company could engage in conduct as a producer, namely, selling, soliciting, or negotiating insurance products. Hence, there seems to be no basis to assert that Delta Dental is a servicing agent for Avesis.

Nevertheless, assuming for the sake of argument that Delta Dental could and is acting as a TPA’s servicing agent, the analysis is not complete. The next two elements of the exception are met in that vision and hearing qualify as health care services and the agreements at issue are between Avesis/FSL and the subscriber, and not Delta Dental. The catch for Delta Dental, however, is the last qualifier – the agreements cannot be solicited by Delta Dental. It is clear from the Agreement that Delta Dental is soliciting the agreements between Avesis/FSL and the Delta Dental subscribers. The Agreement provides, and you acknowledge, that Delta Dental “assumes responsibility for enrollment of the new Avesis/FSL client, including printing of enrollment applications, attendance at enrollment meetings, processing of applications and submission of initial group enrollment of Avesis.” Hence, Delta Dental is soliciting the agreements and cannot avail itself of the exception under Idaho Code § 41-3413(2) for its activities with Avesis.

The activities of Delta Dental as a chapter 34 professional service corporation are expressly limited by chapter 34. Section 41-3413(1) limits what Delta Dental is permitted to do with regard to its subscribers. Section 41-3404 limits what other provisions of the Idaho Code apply to chapter 34 professional service corporation. Delta Dental is not, as suggested by the memorandum, permitted to engage in any activity that it desires. On the

William C. Roden  
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contrary, chapter 34 limits Delta Dental's authority to engage in other businesses. Chapter 34 is intentionally restrictive because professional service corporations are not subject to much of the Insurance Code.

The memorandum next addresses the authority of producers associated with chapter 34 professional service corporations under Idaho Code § 34-3525. Initially, the Department acknowledges that licensed producers may sell policies for both ordinary insurers and professional service corporations such as Delta Dental. We are uncertain what that has to do with Delta Dental since it is not a licensed producer. We are also curious as to the manner in which in-house producers, that is, producers on Delta Dental's payroll, are compensated for the sale of the Avesis product. We requested information related to that process above.

The memorandum also references Idaho Code § 41-3406(4) to argue that a professional service corporation's articles of incorporation may be broader than and not limited to the functions of a service corporation. However, Delta Dental's Articles do not permit Delta Dental to also act as a health maintenance organization. Moreover, reference to § 41-3406 underscores the Department's point that all permitted activity of a professional service corporation must find its authority within the confines of title 41, chapter 34.

The last reference in the memorandum is to Idaho Code § 41-3412. It is our conclusion that this section would support an administrative action against Delta Dental. Section 41-3412(2) permits revocation or suspension of the Certificate of Authority for any violation of chapter 34 that does not otherwise require mandatory suspension or revocation under § 41-3412(1) or § 41-327. Hence, if Delta Dental is in violation of § 41-3413(1) by acting outside the scope of permitted activity as outlined therein, it is within the Director's discretion to revoke or suspend the Certificate of Authority – not that we are suggesting that. It is also the Department's position that it could seek general penalties against Delta Dental under Idaho Code § 41-117 for violation of § 41-3413(1).

In conclusion, Delta Dental elected to organize itself as a title 41, chapter 34, professional service corporation. It is therefore obligated to comply with the limitations of such an organization as set forth in the Idaho Code.

The Department is willing to review any ideas Delta Dental may have that would allow its relationship with Avesis to go forward. As currently structured, however, it appears to be in violation of the statutory authority of title 41, chapter 34, Idaho Code.

William C. Roden  
April 17, 2012  
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We look forward to resolving this issue with you and Delta Dental.

Sincerely,

Office of the Attorney General

A handwritten signature in black ink, appearing to read 'R. Burleigh', with a long horizontal line extending to the right.

Richard B. Burleigh  
Deputy Attorney General  
for the Idaho Department of Insurance

ec: Jean Deluca, [JDeluca@deltadentalid.com](mailto:JDeluca@deltadentalid.com)  
Tom Donovan  
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May 2, 2012

Of Counsel:  
HOPKINS RODEN CROCKETT  
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Richard B. Burleigh  
Deputy Attorney General  
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Department of Insurance  
700 W. State Street, 3<sup>rd</sup> Floor  
P.O. Box 83720  
Boise, Idaho 83720-0043

VIA E-MAIL: [Richard.Burleigh@doi.idaho.gov](mailto:Richard.Burleigh@doi.idaho.gov)

RE: Delta Dental and Avesis Agreement/Vision and Hearing Plan

Dear Richard:

This letter is in response to your letter received via e-mail, dated April 17, 2012. Again, I appreciate the opportunity the Department has provided Delta Dental to address issues raised by Ms. Siehl's letter to the company in February, and also raised by you in your recent letter.

It may well be that I continue to lack a sufficient or more precise understanding of the reason or basis for the Department's concerns relating to the Delta Dental/Avesis relationship with reference to the Avesis/FSL vision and hearing plans. Perhaps it is my lack of understanding of the issue, as currently presented by Ms. Siehl's letter, and reiterated in your letter, which seemed to emphasize a departmental conclusion that Delta Dental, was "actively selling" the Avesis insurance products. It is primarily because of the emphasis placed on the "sales" issue by Ms. Siehl, that I addressed the "sales" issue in my memorandum. At the risk of being repetitious, the following statements, as set forth in my earlier memorandum, based on information confirmed to me by Delta Dental, are correct:

"Delta does not:

- (a) Enter into agreements or have any contractual relationship with purchasers of benefit plans pursuant to Avesis vision or hearing programs.
- (b) Engage in direct sales of Avesis vision or hearing programs nor "share in the profit" from sales of Avesis products. (All sales of Avesis products are made by licensed producers appointed as agents for FLS)

Mr. Richard Burleigh

May 2, 2012

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- (b) Enter into service agreements with vision or hearing health care professional personnel providing services to members of the Avesis vision or hearing programs.
- (c) Collect or disburse fees paid by Avesis plan participants.
- (d) Accept or deny benefit claims made pursuant to the Avesis vision or hearing plans.”

A new issue raised in your letter relates to the role of the Delta Dental internal producers with reference to the “sale” of the Avesis programs. Delta Dental internal producers do not sell the Avesis program to subscribers or employer groups. Delta Dental internal producers only market to external producers, by explaining the Avesis vision and hearing programs, providing informational materials, and encouraging them to market the Avesis programs, as they would any other health care program the external producer may represent. Delta Dental internal producers do not engage in direct sales to employer groups or subscribers with reference to the Avesis programs. Those solicitations and sales are made by independent, external producers on behalf of Avesis and FSL. Commissions to external producers are paid to the external producers by Avesis. Delta Dental internal producers are employees of Delta Dental and are compensated for their services by Delta Dental. They receive no compensation from Avesis or FSL for such services.

Your letter, dated April 17, 2012, appears to indicate that a corporate holder of a Department of Insurance license to engage in the business of a professional service corporation may only engage in business activities specifically authorized by the statute under which the Department’s license was issued, in this case chapter 34, Title 41, Idaho Code. To the extent that is a correct understanding of the Department’s position, we have a fundamental difference of opinion as to interpretation of existing law.

As a preliminary matter, the statement in your letter that “the Department is unlikely to approve such articles of incorporation that attempt to be all things,” an examination of previous approvals does not indicate much departmental analysis of the content of such articles of incorporation, or amendments thereto, and the application of chapter 34, title 41, Idaho Code, to those articles. The history of the approval of articles of incorporation, or amendments to such articles, in the case of Delta Dental, may be of assistance to you in that regard.

The 1971 initial approval of the articles of incorporation of Delta Dental Plan of Idaho, Inc., appears to have been indicated only by the signature of the Director on the face of the filed articles of incorporation, without any further notation or comment.

When the articles of incorporation were amended in 1989, the letter from the Deputy Attorney General to the Director merely stated “this letter shall serve as the opinion and certification that the above-referenced matter is in accordance with title 41, Idaho Code, and is not inconsistent with the Constitution of this State.” There is no reference to chapter 34, Title 41, Idaho Code.

Mr. Richard Burleigh

May 2, 2012

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In 1992, the articles of incorporation were again amended. In this instance, the Director of the Department of Insurance, Harry C. Walrath, approved the articles of amendment to the articles of incorporation of Delta Dental Plan of Idaho, Inc., saying that the articles of amendment, "having been submitted to the undersigned pursuant to Section 41-2827, Idaho Code," had been "approved as conforming to law \* \* ." Section 41-2867, Idaho Code, relates to approval of articles of incorporation of mutual insurers. There is no reference to conformity or consistency of the amendments pursuant to section 41-3406, Idaho Code, which is the section under which the amendments had been submitted. The Director did not indicate any reliance on the requirements of Chapter 34, Title 41. Given this history, it is uncertain as to what the previous Directors were "likely" to have considered when the documents were submitted for approval.

The foregoing examples, specifically with reference to Delta Dental Plan of Idaho, are not intended to be critical of the process, nor of the content of the approvals. But, they do not indicate that the departmental approval was intended to restrict Delta Dental's corporate activities to the provision of health care services for which Delta Dental was issued a license by the Department pursuant to chapter 34, title 41, Idaho Code.

The language of section 41-3406, Idaho Code, indicates that the director is required to approve the articles "unless he finds, after reference of such articles to the attorney general, that they do not comply with the law." The same section requires that the service corporation be "formed as a nonprofit, nonstock professional service corporation consistent with the applicable requirements of this chapter under the statutes of Idaho governing the formation of nonprofit, nonstock corporations in general." [underlining added]

The term, "professional service corporation" is defined, for the purposes of chapter 34, in section 41-3403, Idaho Code as follows:

A "professional service corporation" is one so providing principally health care services by one or more categories of participant licensees, as defined in subsection (9) of this section. Such a service corporation may also provide for materials customarily dispensed or furnished in connection with the services of the licensee." [underlining added]

Delta Dental Plan of Idaho, Inc., as stated in its Articles of Amendment to the Articles of Incorporation, filed on July 31<sup>st</sup>, 1989, is a "nonprofit, nonstock corporation." The corporation has, as one of its principal purposes the establishment and operation of a professional service corporation, as defined by section 41-3403, Idaho Code, i.e., the provision of health care services by participant licensees who have entered into service agreements with the corporation to provide dental services pursuant to subscriber contracts with Delta Dental Plan of Idaho. As a nonprofit, nonstock corporation formed under the general corporate laws of the state, one of its powers is to establish and operate a "professional service corporation," as defined by section 41-3403, Idaho Code.

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It is important to reiterate that Delta Dental Plan of Idaho, Inc., is not "incorporated" under the Idaho Hospital and Professional Service Corporation Act, because there is no Idaho law designated as such an "act." It is "incorporated" pursuant to the corporation laws of the state of Idaho relating to Idaho nonprofit corporations, as set forth in Title 30, Idaho Code. As so incorporated, Delta Dental Plan of Idaho, Inc., has been found by previous departmental directors to be in compliance with Idaho corporate law and that the corporate organization is consistent with the provisions of chapter 34, title 41, Idaho Code.

As set forth in my previous memorandum on this issue, it is my opinion that the correct analysis of the corporate Articles, in stating the corporate purposes, is more properly diagrammed as follows:

"The purpose(s) for which the corporation is organized are the establishment and operation of a nonprofit professional service corporation and for the transaction of any and all lawful business for which a professional service corporation may be incorporated under

(a) chapter 34, title 41, Idaho Code (the Idaho Hospital and Professional Service Corporation Act);

(b) the Idaho Nonprofit Corporation Act; and

(c) under the laws of the State of Idaho."

The Idaho Nonprofit Corporation Act (chapter 3, Title 30, Idaho Code), is, by its specific terms, applicable to any type of lawful nonprofit corporation formed under the provisions of the act or other laws of the state of Idaho. [Section 30-3-1, Idaho Code] The Act further provides that the purposes of the corporation shall be expressed in the Articles of Incorporation, which may be, either alone, or in combination with other purposes, for the transaction of any lawful activity. [Section 30-3-17(b), Idaho Code] A corporation formed under the Idaho Nonprofit Corporation Act has the purpose of engaging in any lawful activity, unless a more limited purpose is set forth in the articles of incorporation. [Section 30-3-23, Idaho Code] The general powers of a nonprofit corporation provide that the corporation has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power to carry on a business. [Section 30-3-24, Idaho Code]

If it is your contention that the validity of Delta Dental Plan of Idaho, Inc., corporate action in engaging in its present business relationship with Avesis, is conduct in which the corporation lacks the power to act, and is therefore an "*ultra vires*" act, section 30-3-26, Idaho Code, disallows such a challenge unless the challenge is made by a corporate director or by a corporate member or members in a derivative proceeding. As indicated herein, we do not regard the challenged conduct to be "*ultra vires*."

The definition of "professional service corporation," in chapter 34, title 41, Idaho Code, does not limit the services or businesses in which the corporation may engage to those set forth in chapter 34. There is nothing in the definition of "professional service corporation" to indicate that a

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licensee under chapter 34, title 41, requires that the corporation engage "exclusively" in activities licensed pursuant to chapter 34. Delta Dental's principal business purpose remains the provision of dental services by its participant licensees to subscribers pursuant to subscriber contracts. However, if it is the Department's conclusion that Delta Dental may only engage in activities authorized by chapter 34, title 41, Idaho Code, it is respectfully submitted that such conclusion is neither justified nor required by any provision of Idaho law.

The reference to VSP, described by you as the only other chapter 34 professional service corporation, prompted a review of the description of VSP's business enterprise and its relationship to Blue Cross of Idaho Health Service Inc., as set forth in the Report of Examination as of December 31, 2008, of Blue Cross of Idaho Health Service, Inc., and filed with the Department of Insurance on May 28<sup>th</sup>, 2010. In addition, the Report of Examination as of December 31, 2006, of Vision Service Plan of Idaho, Inc., filed with the Department of Insurance on June 20<sup>th</sup>, 2008, was also reviewed.

The Blue Cross report was of particular interest. According to the Report, Blue Cross entered into a vision care "subscriber agreement" with VSP. That agreement provided for VSP to arrange and "provide covered services" as described in the Blue Cross group contracts and certificates. The Report does not indicate whether the services are being provided pursuant to contracts between VSP and the person or employer group for whom the vision services are to be provided, or whether the services are to be provided by VSP to Blue Cross members pursuant to Blue Cross contracts with such persons or employers. If it is the latter, would this situation not be a business outside of the purported limitations of chapter 34?

In addition, although VSP pays the "member" doctor directly for services performed, there does not appear to be any requirement for service agreements between VSP and "participant" licensees. The arrangement makes no distinction between participating and non-participating physicians, as may be more consistent with chapter 34, title 41, Idaho Code. In reviewing the Report, the significance of the statement that VSP's licensure in Idaho as a hospital and professional services company and "therefore, meets the requirements of Section 41-901(3), Idaho Code," was not apparent. The referenced subsection defines the term "control" for purposes of title 41 chapter dealing with third party administrators, which does not seem to have any application to the relationship with Blue Cross.

The Report of Examination of VSP, a company wholly owned by a California company not regulated by the Idaho Department of Insurance, reveals that VSP has no employees, is marketed through direct sales representatives and commissioned brokers, and the operations of VSP are conducted from the parent company's administrative offices in California. The VSP Report states that vision care benefits are provided to enrollees and eligible dependents by "participating optometrists and ophthalmologists" within the state of Idaho, although that does not appear to be a requirement for the services arranged by VSP for its "subscriber" agreement with Blue Cross.

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The information relating to the relationship between VSP and Blue Cross is relevant only because of your comments relating to the circumstances under which a chapter 34 licensee may act as a third party administrator, or engage in marketing or fulfill the obligations of a mutual insurance company.

The products being offered by Avesis/FSL are fully regulated and offered pursuant to Idaho law as an insurance product. Licensed external producers are marketing the products. Those producers are licensed and regulated for such activity. Delta Dental is performing administrative tasks with reference to such products and is being compensated for such services. If the Department is perceiving some harm resulting to the general public or to consumers of the Avesis/FSL product from the business relationship between Avesis or FSL and Delta Dental, the import of that concern has not been conveyed to us.

In conclusion, we have difficulty in understanding the reason or motivation for this exchange of opinions on an issue that does not affect Delta Dental's ability to meet its contractual obligations pursuant to chapter 34; is not misleading to consumers; does not violate any provisions of the insurance trade practices provisions; does not affect the company's financial viability; and apparently is not subject to any consumer questions or complaints.

However, if the Department has specific suggestions as to a solution which would satisfy the Department's questions and which would allow Delta Dental to continue its relationship with Avesis, Delta Dental is very willing to consider such suggestions. On behalf of Delta Dental, it is my continuing opinion that the current conduct between the parties is not contrary to existing Idaho law on the issue.

We earnestly want to work with you to resolve this issue in a manner that will continue to allow the Department to equitably, effectively and efficiently administer the Idaho Insurance Code, and, on behalf of Delta Dental, we look forward to your suggestions leading to a resolution of the issue.

With best personal regards,

Sincerely,



William C. Roden

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