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STATE OF MINNESOTA  
DISTRICT COURT

COUNTY OF HENNEPIN  
JUDICIAL DISTRICT      FOURTH

Case Type: Other Civil

Court File No. \_\_\_\_\_

Judge \_\_\_\_\_

STATE OF MINNESOTA,

by its Attorney General,

Mike Hatch,

Plaintiff,

vs.

BLUE CROSS AND BLUE SHIELD OF  
MINNESOTA,

Defendant.

**SETTLEMENT AGREEMENT AND  
CONSENT ORDER FOR FINAL  
JUDGMENT**

Dated:

MIKE HATCH  
Attorney General  
State of Minnesota

WHEREAS, the State of Minnesota, through its Attorney General Mike Hatch, and Blue Cross and Blue Shield of Minnesota have previously filed their assertions, allegations and denials relating to the above-captioned litigation;

WHEREAS, the parties hereto wish to avoid the further expense, delay, inconvenience,

burden and uncertainty of continued litigation in this matter;

WHEREAS, the Attorney General and Blue Cross and Blue Shield of Minnesota desire to promote health and agree that research, treatment and coverage for those in need of mental health, chemical dependency, eating disorder and autism treatment and services needs to and can be advanced throughout the State of Minnesota;

WHEREAS, the Attorney General and Blue Cross and Blue Shield of Minnesota agree that this Settlement Agreement and Consent Order is intended to provide a working model for the advancement of the provision of health care treatment and services in Minnesota;

WHEREAS, the parties desire to settle this matter as provided herein and therefore stipulate to this Settlement Agreement and Consent Order;

Based on the stipulation of the parties hereto, and all files and records in this proceeding, the Court hereby directs entry of the following Order:

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### **DEFINITIONS**

1. "State" or "State of Minnesota" refers to the State of Minnesota, including its agencies and departments but not including political subdivisions of the State.
2. The "Attorney General" refers to Attorney General Mike Hatch, the Office of the Attorney General, and all successors and assigns.
3. Blue Cross and Blue Shield of Minnesota ("BCBSM") refers to BCBSM, Inc., d/b/a Blue Cross and Blue Shield of Minnesota, and all of its present, former and future parents and affiliates (affiliate to mean any entity that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with BCBSM and is licensed to do business in Minnesota), divisions and foundations, the successors and assigns of BCBSM, and its affiliates, divisions and foundations and the respective present, former and future employees, directors, officers, representatives, agents, consultants and attorneys of all of the foregoing. Provided, however, that this Settlement Agreement and Consent Order shall not apply to future operations of former BCBSM affiliates no longer under BCBSM control as of the approval of this Settlement Agreement and Consent Order by the Court.
4. Behavioral Health Services, Inc. ("BHSI") is a subsidiary of BCBSM and is included within the definition in paragraph 3 above.
5. This Settlement Agreement and Consent Order applies to treatment or services for any mental or emotional illness and chemical dependency, regardless of cause. This Settlement Agreement and Consent Order applies to treatment and services for autism and eating disorders, regardless of cause, even if the treatment and services for autism or eating

disorder relate, in whole or part, to a physiological condition. The treatment and services referred to in this paragraph, including any supplies or products related to such treatment and services, and the coverage provided therefor, shall hereinafter be collectively referred to as "Benefits."

6. For purposes of this Settlement Agreement and Consent Order, the term "usual and customary fee" is (a) the amount agreed to between BCBSM and the provider; or, if no such agreement, (b) the lesser of the provider's billed charge or the prevailing payment amount as best ascertainable for the subject Benefits in the area.

7. Pre-service Benefits shall refer to (a) a request for Benefits communicated to BCBSM prior to the rendering of any or all of the requested Benefits; and/or (b) where BCBSM is aware that the BCBSM member's treatment and services are ongoing or where BCBSM is aware the BCBSM member desires continued treatment and services for the subject condition.

8. A "pre-service denial" shall be (a) an affirmative decision by BCBSM not to completely approve a request for pre-service Benefits, including but not limited to, where such decision results in delay or termination in the requested treatment or service, or delay or termination of the requested service at a specific facility or with a specific practitioner; or (b) a failure by BCBSM to completely approve a request for pre-service Benefits within the following timetables, which shall begin to run when an identified BCBSM member, or a provider acting on behalf of an identified BCBSM member, requests approval of specified Benefits:

i. For urgent care, as expeditiously as the member's medical condition requires, but no later than twenty-four (24) hours.

ii. For non-urgent care, two (2) business days.

iii. For non-urgent outpatient care under concurrent review, five (5) business days.

Any denial of Benefits arising from a concurrent review shall be treated as a pre-service denial.

9. Concurrent review shall refer to an assessment that determines the medical necessity of additional services during a course of treatment that is subsequent to an initial authorization or approval of Benefits. Benefits provided prior to a denial of additional services (subsequent to an initial authorization or approval of Benefits) during a course of treatment under concurrent review shall be deemed to be medically necessary.

10. Post-service Benefits shall refer to any or all requested Benefits not defined as pre-service Benefits in paragraph 7 above.

11. Urgent care shall refer to care that requires immediate attention, although it may not be life threatening.

12. Non-urgent care shall refer to care that is not urgent.

13. BCBSM member shall refer to a subscriber or enrollee under a BCBSM plan or program providing Benefits.

14. Protective Order shall refer to the Stipulation and Order in the above-captioned litigation, dated February 21, 2001, which remains in full force and effect.

### **GENERAL PROVISIONS**

15. This Court shall retain jurisdiction for the purposes of implementing, enforcing and ensuring compliance with this Settlement Agreement and Consent Order.

16. In the event that BCBSM concludes, based upon changed circumstances or newly discovered information or research, that the terms of this Settlement Agreement and Consent Order are unfairly restrictive on its business practices, or that the public may be better served by a modification of this Settlement Agreement and Consent Order, then BCBSM may request that the Attorney General modify the terms of this Settlement Agreement and Consent Order. The Attorney General personally shall make a good faith evaluation of the then existing circumstances, and after collecting information the Attorney General deems necessary, make a prompt decision, but in no event more than ninety days (90) from BCBSM's request for same, as to whether to modify this Settlement Agreement and Consent Order. The decision whether to modify this Settlement Agreement and Consent Order shall rest solely within the discretion of the Attorney General. However, any amendment to this Settlement Agreement and Consent Order must be approved by the Court.

17. This Settlement Agreement and Consent Order does not change BCBSM's duty to comply with all applicable federal and state legislation, regulations and rules. The Attorney General and BCBSM acknowledge that to the extent state or federal legislation, regulation, or rule, or an accreditation standard (to which BCBSM is subject) issued by the National Committee on Quality Assurance ("NCQA") or the Utilization Review Accreditation Committee ("URAC") is contrary to the provisions of this Settlement Agreement and Consent Order, the Attorney General and BCBSM shall mutually agree to modify such provisions so as to be in harmony with such legislation, regulation, rule or accreditation standard. For purposes of this paragraph, such legislation, regulation, rule or accreditation standard shall be "contrary" to this Settlement Agreement and Consent Order only if it is impossible to adhere to the terms of this Settlement Agreement and Consent Order and such legislation, regulation, rule or accreditation standard. Any dispute with regard to this paragraph shall be submitted to binding arbitration before Brian Short or another arbitrator mutually agreeable to the parties if Brian Short is not available.

18. Except as otherwise provided in paragraph 19, this Settlement Agreement and Consent Order governs BCBSM's future practices, policies or conduct with respect to Benefits coverage for Minnesota residents who are BCBSM members of BCBSM plans or programs, including plans or programs for which BCBSM acts as a third-party administrator for

processing and adjudicating claims for Benefits, provided that nothing in this Agreement shall apply to Federal Employees Health Benefit Act ("FEHBA") plans and programs.

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### **SELF-INSURED PLANS OR PROGRAMS**

19. Upon implementation of the Administrative Review Committee as provided in paragraph 31 of this Settlement Agreement and Consent Order, all provisions of this Settlement Agreement and Consent Order relating to the Administrative Review Committee shall apply to a self-insured plan or program; provided that Administrative Review Committee decisions shall be advisory and not binding with respect to a self-insured plan or program, unless otherwise provided in accordance with this paragraph. For any self-insured plan or program entered into, amended or renewed 90 days or more after the approval of this Settlement Agreement and Consent Order by the Court, BCBSM shall incorporate in the service agreement terms that will make all provisions of the Settlement Agreement and Consent Order dealing with the Administrative Review Committee a part of their contracts. A self-insured plan or program, however, may affirmatively elect not to include in its contract that the Administrative Review Committee's decisions are binding pursuant to paragraph 32 herein, in which case the decisions of the Administrative Review Committee shall continue to be advisory and not binding upon the plan or program. Within thirty (30) days of the approval of this Settlement Agreement and Consent Order by the Court, paragraph 52 and those portions of paragraphs 51 and 53 that recognize the medical necessity of treatment and services for chemical dependency and eating disorders, respectively, shall apply to a self-insured plan or program. With respect to all provisions of this Settlement Agreement and Consent Order regarding the level, limits and access to Benefits, BCBSM shall for any self-insured plan or program entered into, amended or renewed 90 days or more after the approval of this Settlement Agreement and Consent Order by the Court, incorporate in the service agreement all such provisions as a standard part of their contracts; provided that a self-insured plan or program may affirmatively elect not to include in its contract any or all of such provisions. For purposes of this Settlement Agreement and Consent Order, a "self-insured plan or program" refers to a self-insured plan or program for which BCBSM acts as a third-party administrator for processing and adjudicating claims for Benefits.

### **DISMISSAL OF CLAIMS AND RELEASE**

20. Upon approval of this Settlement Agreement and Consent Order by the Court, the Court shall enter a Final Judgment dismissing with prejudice all claims made by the State in this case against BCBSM.

21. This Settlement Agreement and Consent Order constitutes a full and final resolution between the Attorney General, the State of Minnesota and BCBSM to the extent of the Attorney General's authority, of all claims relating to the subject matter of this action that have been or could have been brought by the Attorney General and/or the State of Minnesota, including for the conduct alleged in the Complaint, Amended Complaint and

proposed Second Amended Complaint in the above-captioned action, up to and including the date of the Court's approval of this Settlement Agreement and Consent Order. The Attorney General and State of Minnesota release and forever discharge BCBSM, to the extent of the Attorney General's authority, from any and all claims relating to the subject matter of this action that have been or could have been brought by the Attorney General and/or the State of Minnesota, for all manner of claims, demands, causes of action, suits, damages (including attorneys' fees and costs), restitution, liabilities of any nature, including civil penalties, whether legal, equitable or statutory, whether known or unknown, actual or potential, suspected or unsuspected that the State of Minnesota or the Attorney General has or had for past conduct (up to and including the date of Court approval of this Settlement Agreement and Consent Order). This paragraph also applies to claims, up to and including the date of the Court's approval of this Settlement Agreement and Consent Order, which relate to the subject matter of paragraph 55 of this Settlement Agreement and Consent Order. Any claims or billings received by the Minnesota Department of Human Services ("DHS") on or before March 31, 2001 are included in the release provisions of this paragraph. Claims or billings first received by DHS after March 31, 2001 are not released under this paragraph but will continue to be processed in the ordinary course of business. With respect to claims of the Regional Treatment Centers (RTCs) operated by DHS, all treatment and services provided at the RTCs on or before March 31, 2001 are included in the release provisions of this paragraph. Treatment or services provided at the RTCs after March 31, 2001 are not released under this paragraph but will continue to be processed in the ordinary course of business.

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#### **BCBSM HANDLING OF BENEFITS CLAIMS**

22. BCBSM shall handle, process, provide and pay Benefits claims in a timely and medically appropriate manner in accordance with applicable law and this Settlement Agreement and Consent Order.

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#### **ESTABLISHMENT OF ADMINISTRATIVE REVIEW COMMITTEE**

23. A three-member Administrative Review Committee ("Committee") shall be established whose purpose shall be to review and determine whether to affirm or reverse a denial of coverage of Benefits by BCBSM as a standard part of BCBSM's Benefits review process. The three members of the Committee shall be composed of one selection by the Attorney General, one selection by BCBSM and one selection by the Chief Judge of Hennepin County District Court. These members shall be designated as primary Committee members.

24. In addition to the primary Committee members, the Attorney General, BCBSM and the Chief Judge of Hennepin County District Court each may select up to three (3) alternate Committee members. An alternate member shall sit as a member of the Committee in place of and at the request of the primary Committee member appointed in the same manner (i.e.

by the Attorney General, BCBSM or the Chief Judge of Hennepin County); provided, however, that the Committee shall always have at least one primary Committee member participate in any decisions. In the event a primary or alternate Committee member becomes unable to serve, that member shall be replaced in the same manner as he or she was first selected.

25. Each primary and alternate Committee member shall serve at the pleasure of the person or entity who selected the member.

26. Any decision by the Committee shall be by majority decision of the Committee, i.e. by two members.

27. Denials of Benefits to be reviewed by the Committee shall be provided to all members of the Committee by BCBSM immediately, but no longer than twenty-four (24) hours after the denial, by physically or electronically delivering or faxing the denial to each primary Committee member's indicated address or fax number or, upon notice to BCBSM, to the primary Committee member's designated alternate. Benefits denials shall contain a written statement by BCBSM upon which the denial is based. If a denial of Benefits is made due to lack of medical necessity, BCBSM shall state with specificity the basis for its determination as to lack of medical necessity. If the denial is due to lack of information, BCBSM shall state with specificity the information needed and the attempts made to obtain it.

28. Once the above information is received by the Committee, the Attorney General's representative shall contact the other two representatives, and the Committee shall make a decision within one (1) business day, except as provided below. If the Committee requests additional information, BCBSM shall immediately provide the Committee with such information to the extent such information has been provided to BCBSM. If the requested information has not been provided to BCBSM or the Committee, the Committee shall make immediate demand upon the health provider or patient for such records and shall make its decision within one (1) business day of receiving such information. Provided, however, that if the Committee does not make a decision within 72 hours after the Committee's initial receipt of the denial from BCBSM for urgent care or within 30 days after the Committee's initial receipt of the denial from BCBSM for non-urgent care, the denial decision by BCBSM shall be deemed to be affirmed solely for purposes of allowing the member to exercise the member's right of review as referenced in paragraph 36 of this Settlement Agreement and Consent Order. All decisions by the Committee shall be in accordance with the terms of the applicable contract and applicable law, and this Settlement Agreement and Consent Order. Any two members of the Committee may reverse or affirm a denial. The Committee shall keep a record, available to the Attorney General and BCBSM on a monthly basis, as to how each Committee member voted on each decision. The Committee members do not need to personally meet in order to render a decision.

29. At the outset, unless and until a different determination is made by the Committee pursuant to paragraph 30 below, the Committee shall review pre-service denials of Benefits by BCBSM and shall not review post-service (except as provided in paragraphs 51 and 53)

or pharmaceutical Benefits denials.

30. In addition, the Committee may, based upon its discretion, decide to include or exclude from its review any denials (including categories or subcategories) of Benefits, including post-service denials of Benefits and denials of pharmaceutical Benefits. The Committee may also decide to exclude from its review categories or subcategories of any pre-service denials of Benefits or denials under paragraphs 51 and 53. It is contemplated that the Committee may, within its discretion, conduct sampling of categories or subcategories of denials of Benefits, even if the Committee does not decide to review all denials in such categories or subcategories.

31. The Committee shall begin to review denials within ninety (90) days of the approval of this Settlement Agreement and Consent Order by the Court.

32. Any Committee decision reversing a denial of Benefits shall be binding upon BCBSM, except with respect to coverage issues where BCBSM did not, at the time of the denial, have available information reasonably necessary to determine whether the treatment or services are otherwise covered under the member's plan. For purposes of this paragraph, "coverage issues" shall mean issues relating to whether the health plan or contract was in force for the treatment or services sought by the subscriber or enrollee.

33. If the Committee determines to review any post-service or pharmaceutical Benefits denials, or categories, subcategories or samplings thereof, the Committee shall determine the definition of denials for such Benefits. The Committee shall also, after consultation with BCBSM and the Attorney General, determine the timetables for BCBSM to refer such denials to the Committee, and for the Committee to act upon such denials. The Committee and BCBSM shall otherwise act in accordance with the provision of paragraph 28 herein.

34. The Attorney General and BCBSM, separately or jointly, may communicate with members of the Committee, whether primary or alternate, at the initiative of the Attorney General or BCBSM or one or more members of the Committee.

35. No party shall provide a Committee member with any compensation, perquisites, benefits or gratuities (except compensation and reimbursement of routine business expenses as set forth in paragraph 38 herein) during their period of service. This prohibition includes meals, travel, lodging, entertainment, or similar non-monetary rewards or compensation. In the event a Committee member is separately employed by BCBSM or the State, this provision does not apply to any compensation, payments or other benefits provided to that employee by his or her employer in the ordinary course of employment. Further, nothing herein shall prohibit BCBSM from compensating a BCBSM participating provider for services performed in accordance with such provider's provider agreement with BCBSM or compensating any other provider for services performed in the ordinary course of the provider's practice.

36. Nothing herein impairs in any way the rights of any person to an internal or external review of adverse determinations, as provided in Minn. Stat. §§ 62M.06 and 62Q.73 (2000),

respectively, or any other rights of review.

37. It is intended that the individual Committee members shall act under the jurisdiction and auspices of this Court and shall be entitled to immunity in the exercise of their duties.

38. BCBSM shall pay the reasonable fees and expenses of the Committee. In no event, however, shall the total fees and expenses exceed \$500,000 in any calendar year. This \$500,000 annual sum shall be divided into three equal parts, with one-third of the total sum going to each entity selecting Committee members (i.e., the Attorney General, BCBSM and the Chief Judge of Hennepin County). Each such selecting entity shall from this allocation be responsible for paying the total fees and expenses for its primary and any alternate Committee members, in such manner as the selecting entity in its discretion deems appropriate. If a selecting entity does not expend its entire one-third allocation in a given year, then such entity shall be entitled to carry over any unused money into a succeeding year(s), in addition to the allocated amount for such year(s), for reasonable fees and expenses of its Committee members. Any unused monies remaining as of December 31, 2006 by any of the selecting entities shall be returned to BCBSM. No BCBSM or Attorney General employee shall be paid fees under this paragraph, but shall be eligible for expenses incurred as a Committee member. It is contemplated by the Attorney General and BCBSM that the total annual allocation of \$500,000 is sufficient for the proper functioning of the Committee in accordance with this Settlement Agreement and Consent Order, for the duration of this Settlement Agreement and Consent Order. In the event unforeseen circumstances render the funds provided for in this paragraph insufficient to pay the reasonable fees and expenses of the Committee, BCBSM and the Attorney General shall meet in an attempt to reach agreement on a modification of the annual allocation. If BCBSM and the Attorney General cannot agree on whether a modification is necessary, or the modified amount, the dispute shall be submitted to the Court pursuant to paragraph 60, which may modify the annual allocation only upon a showing by the Attorney General, who shall have the burden of proof, that unforeseen circumstances render the funds insufficient to pay reasonable fees and expenses of the Committee.

39. Any other third-party payer of Benefits in Minnesota may decide to opt into the Administrative Review Committee process described in this section. If an additional payer(s) opts in, such payer(s) and BCBSM shall mutually-agree upon the selection of one primary Committee member and up to three alternate members (with the Attorney General and the Chief Judge of Hennepin County District Court selecting the other two primary Committee members and up to six alternate members). Provided, however, that if the opting-in of an additional payer(s) creates an undue burden on the Administrative Review Committee, then an additional three members shall be selected, with one additional member selected by the Attorney General, one by the Chief Judge of Hennepin County District Court and one by the mutual selection of the third-party payers, for a total Committee of six members. If an additional payer(s) opts in, such payer(s) shall pay the reasonable fees and expenses of the Committee as agreed to by the Attorney General, BCBSM and the additional payer(s).

## **ACCESS TO SERVICES**

40. BCBSM shall, upon a request for pre-service Benefits, immediately make demand upon the health provider for any records needed to make the Benefits decision. For a post-service request of Benefits, BCBSM shall make demand upon the health provider for any records needed to make the Benefits decision within a reasonable period of time, but no longer than fourteen (14) days from the request for Benefits.

41. If a denial of Benefits is made due to lack of medical necessity, BCBSM shall also state to the BCBSM member the type of treatment or services it authorizes for the condition and provide information on other available providers.

42. BCBSM shall assure that members requesting Benefits have an appropriate provider available within a medically appropriate time for treatment and services, which in no event shall be more than ten (10) business days, or such member shall be entitled to receive Benefits from a licensed provider within Minnesota or within 100 miles in a contiguous state but outside the BCBSM network and BCBSM shall pay the usual and customary fees for such treatment and services received from the nonparticipating provider. BCBSM members in need of urgent or emergency Benefits shall receive such treatment or services immediately from a BCBSM network provider, or such members shall be entitled to receive such treatment or services from a licensed nonparticipating provider within the State of Minnesota, or within 100 miles in a contiguous state, if such treatment or services were not reasonably available from a network provider, with BCBSM paying the usual and customary fees for such treatment and services received from a non-participating provider. BCBSM shall assure patients that follow-up visits shall be available within a reasonable time from the same provider, which in no event shall be more than two (2) weeks. In the event such follow-up visits are not available within the time period, BCBSM shall pay the usual and customary fees for such Benefits received from a non-participating provider. The Administrative Review Committee shall have the discretion to monitor and/or enforce this provision.

43. BCBSM shall provide coverage for Benefits for urgent care provided outside of Minnesota for those BCBSM members who receive such urgent care while traveling or temporarily residing outside of Minnesota, as provided in the applicable BCBSM plan or program.

44. BCBSM shall ensure that all of its Benefits claims reviewers are familiar with, understand and abide by all of the provisions of this Settlement Agreement and Consent Order.

45. BCBSM shall not provide, directly or indirectly, any financial or other incentive to utilization reviewers to deny coverage for Benefits. BCBSM shall not use a capitation methodology to reimburse its subsidiary, BHSI, or any other present or future BCBSM affiliate, for providing Benefits.

46. BCBSM agrees not to sanction any provider for providing medically necessary Benefits.

This shall not prohibit BCBSM from adopting or enforcing standards that assure quality patient care and improvement programs.

47. BCBSM agrees that it will not retaliate or take any other adverse action against a provider, enrollee, patient or any other person who in any way participated in or supported this lawsuit because of that person's participation or support of this lawsuit.

#### **INDEPENDENT REVIEW OF BCBSM AND BHSI**

48. The Attorney General shall appoint an auditor, who during each six-month period during the effective term of this Settlement Agreement and Consent Order, may enter the premises and have full, complete, timely, and unrestricted access to all books, records and personnel of BCBSM, including BHSI clinics, for the purpose of assessing the information and processing flow with respect to Benefits. The first audit shall begin ninety (90) days from the approval of this Settlement Agreement and Consent Order by the Court. The auditor's initial review shall be concluded within sixty (60) days after commencement of the audit and subsequent reviews shall be concluded within two (2) weeks of the commencement of the audit. After each review the auditor shall issue a confidential draft report to the Attorney General and BCBSM. BCBSM shall then have twenty (20) days to comment on or dispute any such report. The auditor may make any revisions to the draft report in his final report in response to BCBSM's comments. BCBSM shall pay the reasonable fees and costs of the auditor. In no event, however, shall the total fees and expenses exceed \$25,000 for the initial audit or \$10,000 for each subsequent audit. The auditor shall have the authority to make recommendations relating to improvements for the timeliness and responsiveness of BCBSM to written or oral inquiries, or the timeliness or responsiveness of BCBSM to requests for Benefits, by providers or BCBSM members. Such recommendations, if any, shall be implemented by BCBSM within sixty (60) days of the issuance of the auditor's final initial report or within forty-five (45) days of any subsequent final report unless a dispute is presented for binding arbitration, in which event the arbitrator shall determine if and when implementation should occur. If BCBSM disputes any of the auditor's recommendations, it may elect within ten (10) days of the issuance of the final report to submit the disputed recommendations to binding arbitration before Brian Short, or such other arbitrator mutually agreeable to the parties if Brian Short is not available.

49. An auditor appointed pursuant to paragraph 48 shall be an independent third party not currently employed by the Attorney General, the State of Minnesota or BCBSM. All draft and final reports and comments referred to in paragraph 48, and supporting documentation, shall be classified as confidential as defined in the Protective Order previously entered by the Court in this action (without the necessity of the reports being stamped "confidential".)

50. Any and all information provided by BCBSM to the auditor specified in paragraph 48 above shall be used only for the purposes set forth in that paragraph.

## **CHEMICAL DEPENDENCY TREATMENT**

51. BCBSM recognizes the medical necessity of treatment and services for chemical dependency including, but not limited to, outpatient and residential treatment programs. BCBSM will ensure that its provider network provides reasonable access and coverage for treatment and services for individuals who are chemically dependent. Such access and coverage shall include, but not be limited to, a residential treatment program of a twenty-eight (28) day duration. If BCBSM denies a request for chemical dependency Benefits based upon BCBSM's determination of lack of medical necessity, such denial shall be sent as expeditiously as the member's medical condition requires, but in no event more than six (6) hours, to the Committee. If BCBSM denies a request for chemical dependency Benefits based upon a reason other than medical necessity, such determination shall be sent to the Committee in accordance with the timetable in paragraph 27 above.

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## **COURT-ORDERED COVERAGE**

52. BCBSM shall deem a court order for Benefits to constitute medical necessity, and BCBSM shall pay and provide coverage for such court-ordered Benefits, where the court order is based upon an evaluation and recommendation for such treatment or services by a physician or a licensed psychologist or, for court-ordered chemical dependency Benefits, by a physician, a licensed psychologist, a licensed alcohol and drug dependency counselor or a certified chemical dependency assessor. If a court orders treatment or services at a non-participating provider, BCBSM shall be obligated to reimburse such provider on the same basis BCBSM would reimburse a similarly-situated network provider. If a network provider is not reasonably available, BCBSM shall pay the usual and customary fees for such treatment or services rendered by the non-participating provider. BCBSM shall pay and provide coverage for BCBSM members' emergency admissions pursuant to Minn. Stat. § 253B.05 (2000), for the entire time the individual is admitted pursuant to the emergency hold. The requirements of this paragraph apply when BCBSM is aware that Benefits are provided pursuant to a court order or Minn. Stat. § 253B.04.

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## **EATING DISORDER TREATMENT**

53. BCBSM recognizes the medical necessity of treatment and services for eating disorders including, but not limited to, anorexia nervosa and bulimia nervosa. BCBSM will ensure that its provider network provides reasonable access and coverage for treatment and services for eating disorders. Such access and coverage shall include inpatient, partial program, residential treatment program, and outpatient treatment and services, including services of registered dietitians. If BCBSM denies a request for eating disorder Benefits based upon BCBSM's individual determination of lack of medical necessity, such denial shall be sent as expeditiously as the member's medical condition requires, but in no event more than six (6) hours, to the Committee for the Committee's decision. If BCBSM denies

a request for eating disorder Benefits based upon a reason other than medical necessity, such determination shall be sent to the Committee in accordance with the timetable in paragraph 27 above.

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### **RESOLUTION OF INDIVIDUAL CLAIMS**

54. The Attorney General has provided BCBSM with the names of the individuals who have filed complaints with the Attorney General's Office regarding BCBSM's denial of Benefits. For any of those complaints that BCBSM has not provided and/or paid the requested Benefits as of the approval of this Settlement Agreement and Consent Order by the Court, BCBSM shall have sixty (60) days to attempt, in conjunction with the Attorney General, to resolve the claims of such persons. For any other complaints received by the Attorney General's Office (regarding denials of Benefits occurring prior to the implementation of the Administrative Review Committee), BCBSM shall have ninety (90) days from the date of the receipt from the Attorney General of the complainant's name, to attempt, in conjunction with the Attorney General, to resolve the claims of such persons. The time limits provided for in this paragraph can be extended only by mutual agreement of the Attorney General and BCB SM. If an individual's claim is not resolved within this time, the individual shall have the option to submit his or her claim to be separately reviewed in binding arbitration before Patrick Fitzgerald, or another arbitrator mutually agreeable to the parties if Patrick Fitzgerald is not available, for the purpose of a determination of whether coverage of Benefits should have been provided by BCBSM and, if so, an amount sufficient to reimburse the individual and/or the provider for the cost of the subject treatment and services. BCBSM shall pay the reasonable fees and expenses of the arbitrator. Any individual who opts for resolution or arbitration under this paragraph shall agree that such process shall be the final resolution of any claims relating to the denial or processing by BCBSM of Benefits.

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### **MENTAL HEALTH AND CHEMICAL DEPENDENCY BENEFITS PARITY**

55. Within ninety (90) days of the approval of this Settlement Agreement and Consent Order by the Court, BCBSM shall provide mental health and chemical dependency Benefits in its new and existing contracts consistent with the requirements of this paragraph and Minn. Stat. § 62Q.47. If mental health Benefits are included in a contract, such Benefits shall include both inpatient and outpatient treatment and such Benefits shall be provided at the same level as coverage is provided for a member for medical services. If chemical dependency Benefits are included in a contract, such Benefits shall include both outpatient and inpatient treatment (including residential treatment centers) and such Benefits shall be provided at the same level as coverage is provided for a member for medical services. Notwithstanding paragraph 19, this paragraph applies to a self-insured plan or program that

is subject to state law.

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### **PAYMENT TO THE STATE OF MINNESOTA**

56. As a resolution of claims for Benefits owed the State of Minnesota, within ten (10) days of the approval of this Settlement Agreement and Consent Order by the Court, BCBSM shall deliver to the Attorney General, for deposit in the General Fund of the State of Minnesota, the sum of \$8,200,000.

### **COMMUNICATIONS BETWEEN BCBSM AND MINNESOTA DEPARTMENT OF HUMAN SERVICES**

57. BCBSM and the Minnesota Department of Human Services shall endeavor to communicate in a timely manner regarding any claims that the Department may have in the future against BCBSM for Benefits provided by the Department to BCBSM members. Such communication between BCBSM and the Department should include the sharing of necessary information to process a claim.

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### **MISCELLANEOUS PROVISIONS**

58. This Settlement Agreement and Consent Order, and any proceedings taken hereunder, are not intended to be and shall not in any event be construed as, or deemed to be, an admission or concession or evidence of any liability or any wrongdoing whatsoever on the part of BCBSM. This Settlement Agreement and Consent Order is not an admission of any factual or legal allegation contained in the pleadings or legal briefs filed in the above-captioned matter by the parties hereto or of a violation of any law for any purpose by the parties hereto.

59. The settlement negotiations resulting in this Settlement Agreement and Consent Order have been undertaken by the parties hereto in good faith and for settlement purposes only, and neither this Settlement Agreement and Consent Order nor any evidence of negotiations hereunder shall be offered or received in evidence in any proceeding for any purpose other than in an action or proceeding arising under this Settlement Agreement and Consent Order.

60. The parties to this Settlement Agreement and Consent Order agree to use their best efforts and to cooperate with each other to carry out the terms herein. As part of this cooperation, the parties agree that in the event of a dispute or an alleged breach of this Settlement Agreement and Consent Order, the aggrieved party shall notify the other party, and the parties shall have thirty (30) days during the first ninety (90) days after approval of this Settlement Agreement and Consent Order by the Court, and ten (10) business days thereafter to correct or resolve any such matters before application for enforcement shall be made to this Court. Any notice to the State shall be to the Attorney General, and any notice

to BCBSM shall be to the General Counsel.

61. No portion of this Settlement Agreement and Consent Order shall provide any rights to, or be enforceable by, any person or entity that is not a party hereto. No person or entity that is not a party shall have standing to enforce this Settlement Agreement and Consent Order. Except as expressly provided herein, no portion of this Settlement Agreement and Consent Order shall bind any non-party or determine, limit or prejudice the rights of any such person or entity. The claims of individual BCBSM members who do not opt for resolution through paragraph 54 above are not prejudiced by this Settlement Agreement and Consent Order.

62. Except as otherwise provided in paragraphs 18 and 19 herein, the provisions of this Settlement Agreement and Consent Order apply with respect to Benefits under a BCBSM plan or program for a BCBSM member residing in Minnesota. Coverage for Benefits shall be subject to the terms and conditions of each member's contract and applicable law. Such terms and conditions shall include, but not be limited to, deductibles, co-insurance, coordination of benefits, co-pay provisions and benefits limits. Nothing herein is intended to, or in fact does, create any new right for BCBSM members except as specifically set forth herein.

63. Nothing herein modifies Minnesota or federal law (including, but not limited to, the Health Insurance Portability and Accountability Act and 42 C.F.R. §§ 2.1 - 2.67, Confidentiality of Alcohol and Drug Abuse Patient Records) or BCBSM contractual requirements with respect to the confidentiality of patient information, trade secret information or other protected information encompassed within this Settlement Agreement and Consent Order. Any such protected information shall be provided and treated with appropriate confidentiality protections on a need-to-know basis (e.g., to the Committee, to the auditor specified in paragraph 48 above, etc.). Nothing herein modifies the Protective Order previously entered by the Court in this action. It is specifically contemplated that patient identifiable information shall be provided to Administrative Review Committee members, the auditor specified in paragraph 48, arbitrators, and the Court under the terms and conditions of this Settlement Agreement and Consent Order.

64. Nothing herein requires BCBSM to reveal to anyone documents or information that are subject to the attorney-client privilege or work product doctrine. Upon any such assertion, BCBSM shall timely produce, at the request of the Attorney General, a privilege log that specifies the date the document was created, who created the document, the purpose for the document's creation, recipients of the document and the general subject matter of the document. Nothing herein requires BCBSM to waive the attorney-client privilege or work product doctrine applicable to any communications with its present or former employees.

65. It is agreed and recognized that any payments made pursuant to this Settlement Agreement and Consent Order are ordinary and necessary business expenses of BCBSM in accordance with BCBSM's enabling legislation.

66. Nothing in this Settlement Agreement and Consent Order creates any waiver, right or presumption with respect to the jurisdiction of any state or federal court over any

subsequent litigation involving any BCBSM ERISA plan or program. Provided, however, that BCBSM acknowledges that the Attorney General retains the authority to implement, enforce and ensure compliance with this Settlement Agreement and Consent Order, and any disputes hereunder, in this Court, and BCBSM agrees that it will not attempt to remove any such action or proceeding to federal court.

67. Neither of the parties hereto shall be considered to be the drafter of this Settlement Agreement and Consent Order or any provision hereof for the purpose of interpretation or construction hereof.

68. BCBSM shall implement all provisions of this Settlement Agreement and Consent Order within thirty (30) days of the approval of this Settlement Agreement and Consent Order by the Court, except as otherwise provided herein.

69. This Settlement Agreement and Consent Order shall remain in effect until December 31, 2006.

Dated:

MIKE HATCH  
Attorney General  
State of Minnesota

**BCBSM, INC.**, d/b/a/ Blue Cross and  
Blue

Shield of Minnesota

APPROVED BY THE COURT:

Dated: \_\_\_\_\_, 2001 \_\_\_\_\_

Judge Myron S. Greenberg

Hennepin County District Court

LET FINAL JUDGMENT BE ENTERED ACCORDINGLY