

## **Group Health Permanente, P.C.**

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### **SELF-INSURANCE**

**Subsidiaries (WAC 296-15-023)(repealed 1999, See WAC 296-15-031)**

When one corporation exercised virtually complete authority and influence over a second corporation, controlled the assets of the second corporation, as well as the policy and daily operations through the appointment of the medical director, the second corporation is a subsidiary of the first under the definition in WAC 296-15-023. ...*In re Group Health Permanente, P.C., BIIA Dec., 98 20064 (2000)*

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1 assistants, certified nurse midwives, and other professional health care providers. GHP was  
2  
3 granted corporate status by the state and the professionals began providing health care as  
4  
5 shareholders on or about December 31, 1997. Under the law, such a corporation must have all of  
6  
7 its shares of stock owned by the professionals.

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9 A contract, in the form of a medical services agreement, was concluded between GHC and  
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11 GHP to become effective January 1, 1998. The contract provides the basis of the relationship  
12  
13 between the two corporate entities. On page 6, the contract provides that GHP will not contract  
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15 with anyone else to provide health care without the prior written consent of GHC. On page 7, the  
16  
17 contract states that GHP and GHC are separate corporate entities. On page 8, GHP is required to  
18  
19 make certain that all of its doctors meet the GHC credential requirements. On page 11, GHP  
20  
21 authorizes GHC to bill for services and make payment to GHP for services rendered. On page 18,  
22  
23 the contract states that GHC will pay GHP on a semi-monthly basis. See Exhibit No. 2.

24  
25 GHC and GHP applied to the Department of Labor and Industries to allow GHP to be  
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27 self-insured for purposes of workers' compensation under the self-insurance certificate granted to  
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29 GHC. GHP maintained that under the controlling regulations it was a "subsidiary" of GHC and,  
30  
31 therefore, entitled to the self-insured status within GHC's certificate. WAC 296-15-023.

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33 The Department denied the application. GHP appealed to the Board. The issue before the  
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35 Board is whether GHP is a subsidiary of GHC under the definition of subsidiary within the  
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37 regulations promulgated by the Department.

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39 The appeal is decided on the interpretation of the following words: "A subsidiary is defined,  
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41 for the purpose of this rule, as an entity which is fifty percent owned and/or has its interest  
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43 controlled by another single firm." This is the second sentence of subsection (1) of WAC 296-15-  
44  
45 023. The first sentence of that subsection requires that all subsidiaries or divisions doing business  
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47

1 in the state of Washington shall be included in the self-insurance certification of a firm. The latter  
2  
3 term is defined as the parent corporation or entity.  
4

5       Clearly, under general corporation law, the term "subsidiary" has but one meaning, that is, a  
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7 corporate entity, which has all or a controlling portion of its common stock (voting stock) owned by  
8  
9 another corporate entity. GHP does not qualify, within that definition, as a subsidiary of GHC. The  
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11 Department alleges it has attempted to safeguard the interests of the state of Washington and  
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13 presumably the state's workers by defining the word subsidiary as used in the regulation to be  
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15 consistent with the classic definition. Such a definition prohibits GHP from qualifying for  
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17 self-insured status within GHC's certificate. We find the classic definition is not the exclusive  
18  
19 definition based on the wording of the regulation.  
20

21       The Department is concerned that corporate entities will spin off divisions or subsidiaries that  
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23 have high risk factors for their employees so that those entities will be covered under the State  
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25 Fund and not be a burden to the self-insurer. The Department also claims its intention by drafting  
26  
27 the language of subsection 023 was to prevent one business entity from insuring another business  
28  
29 entity without there being the subsidiary status as defined by the subsection.  
30

31       The testimony elicited from Department employees indicates the Department has interpreted  
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33 the meaning of subsection 023 to require stock ownership. Larry Wilkinson, supervisor of the  
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35 certification services unit of self-insurance for the Department of Labor and Industries, testified for  
36  
37 the Department that controlling interest is defined as financial ownership.  
38

39       The subsection provides as follows:  
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41       (1) The certification of a firm will include all of its subsidiaries or divisions doing  
42  
43 business in the state of Washington. A subsidiary is defined, for the purposes  
44  
45 of this rule, as an entity which is fifty percent owned and/or has its interest  
46  
47 controlled by another single firm.

      (2) One certificate will be issued to an approved self-insurer, including  
all subsidiaries or divisions. The entities will be considered as one employer  
for all purposes of Title 51 RCW.

1  
2 The disjunctive final phrase of the second sentence of subsection 023 defines "subsidiary"  
3  
4 as that entity which has its interest controlled by another single firm. The first part of that  
5  
6 disjunctive phrase defines a subsidiary as an entity that is fifty percent owned by another single  
7  
8 firm. The Department, had it so desired, could have stated in the second part of the phrase that  
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10 fifty percent ownership was not required, but only that ownership which would control the destiny of  
11  
12 the business entity would be required. Instead, the Department chose to use the word "interest."  
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14 "Interest" is not necessarily defined as ownership. According to the dictionary, it may be a title or  
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16 legal share, but it can also be a right. It can be something in which an entity has a share of  
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18 ownership or control. It is something because of which an entity has the power of influencing  
19  
20 another entity. It is the effective controlling of an enterprise. *Webster's Third New International*  
21  
22 *Unabridged Dictionary* (1986).

23  
24 Our industrial appeals judge correctly determined that GHP is not a subsidiary of GHC in the  
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26 classic sense. However, the judge arrived at that decision and the decision that GHP did not  
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28 qualify under the second portion of the final phrase of section 023 by reading it in conjunction with  
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30 section 022. Part of section 022 reads "[f]or the purposes of this rule, a parent firm is defined as  
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32 one which owns fifty percent, and/or has a controlling interest in, another firm which shall be  
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34 considered to be its subsidiary." As the judge correctly points out, the words "controlling interest"  
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36 and "interest controlled" are two different things. These different phrases give rise to inconsistent  
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38 definitions of parent and subsidiary in the two sections. The judge, then, in an attempt to achieve  
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40 the objective of reconciling the difference by reading the two subsections together and giving effect  
41  
42 to each of them, read the two as complementary rather than in conflict with each other. See *Waste*  
43  
44 *Management of Seattle, Inc. v. The Utilities and Transportation Commissions*, 123 Wn.2d 621  
45  
46 (1994); *In re Eaton*, 110 Wn.2d 892 (1988); *Tommy P. v. Board of County Commissioners*, 97  
47  
Wn.2d 385 (1982).

1 As the judge stated, rules of statutory construction apply equally to administrative rules and  
2 regulations. *State v. McGinty*, 80 Wn. App. 1006 (1995). "If a statute is plain and unambiguous, its  
3 meaning must be derived from the language of the statute itself." *Western Telepage v. City of*  
4 *Tacoma*, 95 Wn. App. 140, 144 (1999). "In determining what a statute means, words should be  
5 ascribed their plain and ordinary meanings. When a statute does not define a nontechnical word,  
6 the court may look to the dictionary for guidance." (Citations omitted.) *U.S. Tobacco Sales and*  
7 *Marketing Company Inc. v. The Department of Revenue*, 96 Wn. App. 932, 939 (1999).  
8

9 A controlling interest in an entity is defined as the ownership of a sufficient number of shares  
10 of the corporation to control the policy of that corporation. *Webster's II New Collegiate Dictionary*,  
11 246 (1995). The definition of "interest controlled" is totally different from the definition of controlling  
12 interest. Interest, as noted above, is only a claim or right in something and control is the exercise of  
13 authority or influence over something or someone.  
14

15 The judge stated that the only way the regulatory scheme would constitute a unified whole is  
16 to use the same definition of the words in question in both subsections. He, therefore, concluded  
17 that GHP could not be a subsidiary within the definition of section 023.  
18

19 We come to a different conclusion from that of our judge. Both sections 022 and 023 have  
20 the specific words "for the purpose of this rule" as a part of the definitions used in each.  
21 Section 022 is a rule and section 023 is a different rule. Each rule has a different purpose. It does  
22 not strain the definition in one to give a different meaning to what amount to different words in the  
23 other. As stated before, "controlling interest" is not the same as "interest controlled." In section  
24 023 the intent of the rule is to make certain that one self-insured employer is required to keep all of  
25 its subsidiaries or those business entities over which it has control within one self-insurance  
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1 certificate. As is pointed out by the Supreme Court, sitting *en banc* in *Manor v. Nestle Food*  
2  
3 *Company*, 131 Wn.2d 439 (1997), the intention of section 023 is:

4  
5 [R]ational approach to the problem of self-insured businesses spinning a  
6 risky portion of their enterprise off to state fund coverage, and ensuring  
7 that corporate parents bear complete responsibility for the coverage of  
8 the workers of the parent and any of its subsidiaries. The rule is  
9 designed to ensure, with the changes in status of employers through  
10 merger, consolidation, combination, and otherwise, employees will not  
11 have to guess who their employer is for purposes of the IIA, and  
12 employees will receive the statutorily-mandated coverage.

13  
14 *Manor*, at 454-455.

15  
16 The purpose of section 022 is to define the level of security if companies are to be insured  
17 separately. It applies when a subsidiary alone is applying for a self-insurance certificate. It requires  
18 a parent to be the guarantor of the subsidiary's financial responsibilities under the Act. It contains  
19 one way in which to define a parent corporation. Section 023, on the other hand, requires that a  
20 parent entity applying for self-insurance status must include all of its subsidiaries, as well as those  
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22 business entities over which it has control.

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GHC exercises virtually complete authority and influence over GHP. GHP must have the  
approval of GHC to do business. GHC controls the assets of the two corporations and the policy  
and daily operations of GHP through control of the appointment of the medical director of GHP.  
GHC is the only entity that provides revenue to GHP. Nothing could be more controlling of the  
future of GHP as a corporate entity than being forced to look to GHC as its only source of revenue.

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**FINDINGS OF FACT**

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2  
3 1. On November 12, 1997, Group Health Permanente P C, a corporate  
4 employer, requested that the Department of Labor and Industries  
5 include Group Health Permanente P C under Group Health  
6 Cooperative's self-insurance certification. The Department denied this  
7 request by letter dated December 24, 1997.

8  
9 Group Health Permanente P C protested the December 24, 1997 letter  
10 on January 27, 1998. On September 9, 1998, the Department issued a  
11 letter denying the request for inclusion and stated that the letter should  
12 be considered an appealable order. Group Health Permanente P C  
13 appealed this letter to the Board of Industrial Insurance Appeals on  
14 November 3, 1998. On December 1, 1998, December 11, 1998, and  
15 December 22, 1998, the Board issued orders extending the time to act  
16 on the appeal. On February 2, 1999, the Board issued an order granting  
17 the appeal, assigning it Docket No. 98 20064, and ordering that further  
18 proceedings be held.

19  
20 2. Group Health Cooperative is a corporation that provides prepaid health  
21 care to residents of Washington in service areas where it is licensed to  
22 do so. It has been a self-insured employer for purposes of industrial  
23 insurance benefits since the inception of the self-insurance program in  
24 Washington.

25  
26 3. In 1996, Group Health Cooperative began discussions with Kaiser  
27 Foundation Health Plan about affiliating the two organizations. To  
28 further this, plan healthcare professionals, including physicians,  
29 physicians' assistants, certified midwives, and a few other categories of  
30 professional medical providers resigned from Group Health Cooperative  
31 as of December 31, 1997. These professionals then became  
32 shareholders in Group Health Permanente P C, a professional services  
33 corporation.

34  
35 4. Group Health Cooperative provides all the facilities, services, support  
36 staff, almost all the patients and income for Group Health Permanente  
37 P C. Group Health Permanente P C agrees not to provide medical  
38 services to any other provider without the express permission of Group  
39 Health Cooperative. All shareholders of Group Health Permanente P C  
40 must be licensed and granted privileges by Group Health Cooperative to  
41 practice in Group Health Cooperative facilities. If such shareholder's  
42 certification is denied, that person must surrender his or her share and  
43 resign from Group Health Permanente P C. Group Health Cooperative  
44 provides all Group Health Permanente P C shareholders with their  
45 malpractice insurance.  
46  
47



- 1  
2 5. The two corporations entered into a medical services agreement  
3 effective January 1, 1998. The agreement provided that Group Health  
4 Permanente P C would not contract with any other entity to provide  
5 health care, that all Group Health Permanente P C doctors would meet  
6 the Group Health Cooperative credential requirements, that Group  
7 Health Cooperative would bill for services and make payment to Group  
8 Health Permanente P C for services rendered, that Group Health  
9 Cooperative would pay Group Health Permanente P C on a  
10 semi-monthly basis, and that Group Health Permanente P C would only  
11 name a medical director with the consent of Group Health Cooperative.  
12
- 13 6. All shares of stock in Group Health Permanente P C are owned by the  
14 professional medical caregivers employed by Group Health Permanente  
15 P C.  
16

17 **CONCLUSIONS OF LAW**

- 18
- 19 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
20 parties and the subject matter of this appeal.  
21
- 22 2. Pursuant to the definitions contained in WAC 296-15-023, Group Health  
23 Permanente P C is a subsidiary of Group Health Cooperative and  
24 should be included under Group Health Cooperative's self-insurance  
25 certification.  
26
- 27 3. The Department letter of September 9, 1998, is incorrect and is  
28 reversed. The cause is remanded to the Department with directions to  
29 allow Group Health Permanente P C to be self-insured under the  
30 self-insurance certificate of Group Health Cooperative.  
31

32 It is so ORDERED.

33  
34 Dated this 26th day of June, 2000.

35  
36 BOARD OF INDUSTRIAL INSURANCE APPEALS

37  
38  
39 /s/ \_\_\_\_\_  
40 THOMAS E. EGAN Chairperson

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43 /s/ \_\_\_\_\_  
44 FRANK E. FENNERTY, JR. Member

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47 /s/ \_\_\_\_\_  
JUDITH E. SCHURKE Member

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