

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Roberts</i>	DATE <i>7-10-12</i>
----------------------	------------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000013</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Singleton, Post</i> <i>Cleared 9/17/12, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>7-20-12</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

Grimball & Cabaniss, LLC

Attorneys at Law



473 SAVANNAH HIGHWAY
CHARLESTON, SC 29407
(843) 722-0311 - PHONE
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RECEIVED

JUL 10 2012

Department of Health & Human Services
OFFICE OF THE DIRECTOR

TO:

NAME: BRYAN KOST
FIRM: SC DEPT HEALTH & HUMAN SERVICES
FAX #: 803-255-8235

FROM:

NAME: WARREN MOISE
FILE NO.: 29214.3
CLAIM NO. _____

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July 10, 2012

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FAX 1-803-255-8235
Bryan Kost
SC Dept. of Health and Human Services
1801 Main Street
Columbia, SC 29201

Re: David Rosenberg, Individually, and Marcelle Rosenberg,
Individually and as Guardian ad Litem of AR, a minor v.
Aetna Life Insurance Company, Inc.
Case No. 2:12-207-DCN
Our File 29214.3

Dear Mr. Kost:

Enclosed with this letter are releases to SCDH&HS and Medicaid allowing you to communicate with me. I represent the Rosenbergs (David, Marcelle, and Allan) in a lawsuit pending in federal court against Aetna for bad faith insurance practices and other claims. A copy of the Amended Complaint is being faxed also. Although I may be wrong, I suspect that Medicaid has a lien. I will need a witness from SCDH&HS as to the facts of your investigation, the ultimate decision to pay for Allan's treatment (including why), when it was paid, and how much was paid. If the decision to pay the CALO bill was made by a judge, I would appreciate some specifics of which judge decided that payment must be made.

With kindest regards, I am

Sincerely yours,



E. Warren Moise

EWM/ewm

Enclosures

CONSENT FOR RELEASE OF RECORDS**To: MEDICAID**

I hereby authorize you to release to the law firm of **Grimball & Cabaniss, L.L.C., PO Box 816, Charleston, South Carolina 29402-0816** any and all information and documents in your possession (your entire record) whether on hard copy or as computer data about my son **Allan Rosenberg (DOB: 05/07/1997)**, including but not limited to matters regarding his health and medical history, hospitalizations, therapy, treatments, alcohol abuse, psychiatric/psychological care, consultations, tests, reports, bills, advice, diagnosis, treatment, disease, information related to alcohol, drug, or substance abuse, or other information.

I authorize the exchange of this information via mail, fax, email, and all other forms of delivery. I further grant permission for you to speak to attorney **Warren Moise, of Grimball & Cabaniss, LLC.**

I understand that I have a right to cancel/revoke this authorization at any time. I understand that if I cancel/revoke this authorization I must do so in writing. I understand that the cancellation/revocation will not apply to information which has already been released in response to this authorization. Unless otherwise canceled/revoked, this authorization will expire/end one year from this date.

I understand that authorizing the disclosure of protected health information is voluntary. I can refuse to sign this authorization. I do not need to sign this form to receive treatment. I understand I may review and/or copy the information to be disclosed, as provided in CFR 164.524. I understand that any disclosure of information carries with it the possibility of unauthorized disclosure by the person/organization receiving the information. The protected health information used or disclosed pursuant to this release may be subject to re-disclosure by the recipient without protection of privacy rules.

I understand I will be given a copy of this authorization. I hereby waive any rights under the Freedom of Information Act and specifically authorize release of these records pursuant to HIPAA.

Dated: July 8, 2012


David Rosenberg
as parent of Allan Rosenberg


Witness

CONSENT FOR RELEASE OF RECORDS

To: South Carolina Department of Mental Health

I hereby authorize you to release to the law firm of **Grimball & Cabaniss, L.L.C., PO Box 816, Charleston, South Carolina 29402-0816** any and all information and documents in your possession (your entire record) whether on hard copy or as computer data about my son **Allan Rosenberg (DOB: 05/07/1997)**, including but not limited to matters regarding his health and medical history, hospitalizations, therapy, treatments, alcohol abuse, psychiatric/psychological care, consultations, tests, reports, bills, advice, diagnosis, treatment, disease, information related to alcohol, drug, or substance abuse, or other information.

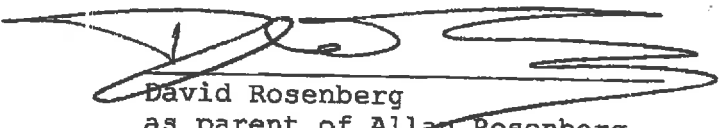
I authorize the exchange of this information via mail, fax, email, and all other forms of delivery. I further grant permission for you to speak to attorney **Warren Moise, of Grimball & Cabaniss, LLC.**

I understand that I have a right to cancel/revoke this authorization at any time. I understand that if I cancel/revoke this authorization I must do so in writing. I understand that the cancellation/revocation will not apply to information which has already been released in response to this authorization. Unless otherwise canceled/revoked, this authorization will expire/end one year from this date.

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I understand I will be given a copy of this authorization. I hereby waive any rights under the Freedom of Information Act and specifically authorize release of these records pursuant to HIPAA.

Dated: July 8, 2012


David Rosenberg
as parent of Allan Rosenberg


Witness

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IN THE UNITED STATES COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

David Rosenberg,)	Case No. 2:12-207-DCN
Individually, and)	
Marcelle Rosenberg,)	
Individually and as)	
Guardian ad Litem of)	AMENDED COMPLAINT
AR, a minor)	
)	Jury Trial Requested
Plaintiffs,)	
)	
v.)	
)	
Aetna Life Insurance)	
Company, Inc.)	
)	
Defendant.)	

The Plaintiffs complain of the Defendant as follows:

1. Aetna Life Insurance Company, Inc. (hereinafter "Aetna") is an insurer incorporated in and has its principal place of business in Connecticut.
2. Aetna issued its family health insurance policy number W184387791 ("the policy") on January 1, 2011, to David Rosenberg covering David, Marcelle, and AR with certain health benefits. A copy of the policy is attached as Exhibit A and incorporated by reference. The policy has provided coverage continuously to date.
3. David Rosenberg is an independent insurance agent on Daniel Island in Berkeley County selling Aetna insurance policies in addition to those of other insurers.
4. The Plaintiffs David and Marcelle Rosenberg are husband

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and wife. They and their son AR permanently reside in Charleston County, South Carolina. The policy agreement was executed by the Plaintiff David Rosenberg in Berkeley County, South Carolina, and communications with the Defendant have been done largely through Plaintiff's office in Berkeley County.

5. The policy premium was \$1,280.00 per month during 2011, which has been and continues to be timely paid. In 2012, the policy was modified to make Marcelle the primary insured with AR still a dependent on her plan. The new plan identification number is W191025896. In addition, the Plaintiffs personally paid a \$5,000.00 deductible for AR under the policy and also their \$5,000 co-insurance maximum charges totaling \$10,000 for the year 2011.

6. These deductibles and out-of-pocket charges have resumed anew in 2012. If AR requires further treatment at the same level of care as previously, this will mandate an additional \$10,000 out-of-pocket contribution by the Plaintiffs.

7. Marcelle Rosenberg has been, or is in the process of being, appointed by the Court as Guardian ad Litem of AR, a child under the age of 18 years.

8. AR has been a patient since January 16, 2011 at Change Academy Lake of the Ozark ("CALO"). CALO is a highly effective residential (inpatient) treatment center for adolescents suffering from serious mental- and emotional-health problems such as reactive attachment disorder and is located at Lake Ozark, Missouri. There

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are no similar clinics in South Carolina nor in the United States offering the treatment used by CALO. Although their recommended (average) treatment term is 14 to 18 months, the length/term of treatment provided by CALO to its patients, including AR, is determined by the patient's progress rather than a fixed number of days, such as a week or month. The sooner the patient progresses, the more quickly he is released from CALO.

9. AR is directly liable for the medical/mental-health treatment rendered to him at CALO, and CALO also has made a claim against David Rosenberg for AR's treatment bills as well.

10. Subject matter jurisdiction is proper under 28 U.S.C. § 1332 based on diversity of citizenship in that the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of costs and expenses. Personal jurisdiction exists as the Defendant will or has been served through its agent; at all times relevant, Aetna has regularly and continuously sold health insurance policies in South Carolina.

11. Venue is proper in South Carolina because the most substantial part of the causes of action against this Defendant occurred in Berkeley and Charleston Counties in South Carolina.

Facts

12. AR was adopted by David and Marcelle Rosenberg as an infant, and since that time they have loved him the same as their other children. Since adopting AR, the Rosenbergs have had two

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biological children, a girl and a boy, both of whom are also minors (younger than AR) and live in the house with AR when he is not at CALO.

13. AR suffers from mental-health and emotional problems arising from certain disorders. One of AR's diagnoses is an extremely serious condition called reactive attachment disorder ("RAD"), which is more commonly found in adopted children as opposed to parents' own biological children. RAD may be caused in part by a child's sense of worthlessness arising from a perception that by putting the child up for adoption, his biological parents did not want him in their lives. RAD manifests itself in diverse ways, including violence, defiance, destruction of property, setting fires, self-injury, depression, and lack of motivation. AR suffers from several of these RAD symptoms. RAD can cause, and has in AR's case caused, disruption of the patient's family life.

14. It is critical that RAD be treated quickly and effectively before the patient reaches adulthood. When not treated quickly and effectively, there is evidence that RAD children have greater than normal potential to become involved in antisocial behavior as adults, including criminal activity, and to become sociopaths. RAD in combination with a loving family and proper treatment need not be a lifelong curse. Unless successfully treated, however, the RAD child can be a danger to himself, his family, and the public.

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15. In addition to RAD, AR has been diagnosed with other mental/emotional problems such as dysthemic disorder, attention-deficit hyperactivity disorder - combined type, and major depression.

16. AR's mental-health and emotional symptoms were not apparent when he was an infant. As AR grew from a baby into adolescence, the aforementioned problems began to vividly manifest themselves. Initially, treatment through individual and family outpatient psychological counseling, medication, and psychiatric intervention were done. These interventions did not solve or reasonably control his problems.

17. AR's parents did not give up. They educated themselves and sought other treatment programs.

18. However, AR was becoming disruptive in school where he easily accelerated from a verbal disagreement to a physical response. So, from June 23, 2010 to August 10, 2010 AR was enrolled in a wilderness therapy program in Old Fort, North Carolina called SUWS of the Carolinas.

19. The therapy at SUWS of the Carolinas did not rectify AR's problems. Although he made improvement, his therapist there became very concerned for his future. By now, he was at a critical age - already 13 years old. His therapist believed that he might need specialized treatment of a sort he had not been getting in the Carolinas and that the treatment had to be given in a long-term

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residential (i.e., inpatient) facility, lest he regress.

20. Against his therapist's recommendation that AR be placed in a resident home, his parents allowed him to return to Charleston from SUWS of the Carolinas hoping that he could be treated at a lower level of care and stay in the family home. AR did not improve at home. AR was beginning to lose control. He was by then nearly the same height as his father, quite strong, and often physically aggressive. His little brother and little sister became physically afraid of him, on one or more occasions hiding in a closet or bedroom while he was in a rage. AR's moods and lack of self control became a crisis. He abused other children at school, threatened to kill himself, threatened violence against his mother and father (both of whom have had physical altercations with him in the past), and punched holes in walls. On one occasion, AR pursued his sister into the street threatening violence against her and chased his little brother into the front yard where a neighbor who was driving by picked up the child. Consequently, CALO was contacted and on or about January 16, 2011, two CALO representatives appeared at the Rosenberg house at 6 AM to drive AR to Missouri. From this point onward, Aetna was timely supplied with AR's CALO records and information, as well as information from sources other than CALO, both upon request and often even when not requested.

21. After research, his Charleston therapist recommended CALO. AR's other healthcare providers concurred that this treatment

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was medically necessary. A team of two CALO personnel drove to Charleston, South Carolina and picked up AR.

22. When he was first admitted at CALO, Aetna's policy was excess or secondary coverage as there was an existing primary policy in place with Mega Life and Health Insurance Company ("Mega"). Initially, Aetna would not be primarily liable for most payments until: (a) the Mega policy was exhausted or did not pay the full charge, and (b) AR's deductible and co-insurance were met. However, because of CALO's standard operating procedure, CALO sought and received pre-certification from Aetna for CALO's treatment upon AR's admission.

23. On March 25, 2011, Mega's policy was exhausted. Aetna became the primary insurer on March 26, 2011. The Plaintiffs through CALO applied to Aetna to pay for future treatments.

24. Prior to exhaustion of its policy benefits on March 25th, Mega paid CALO's bills promptly and in full, less deductibles and co-insurance. However, once Aetna became primarily liable, Aetna immediately began a pattern of conduct designed at all costs to avoid or delay payment of the money owed by Plaintiffs to CALO. Bills for treatment, which were due upon completion of each segment of treatment, were sent regularly by CALO to Aetna. Contradictory, arbitrary, and incorrect reasons were given for denials by Aetna. Late payments for AR's treatment, when they were paid at all, were the norm and continue to be so today.

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25. Aetna is required under the policy to timely respond to Plaintiffs' requests for information, and the Plaintiffs are entitled under the policy to receive accurate information about the claims handling process. However, during the course of AR's treatment, important requests to Aetna by the Plaintiffs for information went unheeded or were partially supplied. Moreover, during Plaintiffs' internal appeal to Aetna for a reconsideration of the denied charges, a request was made to Aetna's claims handler to put Aetna's position about certain matters into writing so that the Plaintiffs could be sure they complied with Aetna's requirements. However, Aetna's claims handler refused to put Aetna's position in writing. Despite notice that the Plaintiffs were represented by counsel, Aetna frequently contacted the Plaintiffs directly, bypassing counsel, and on one occasion, sent documents to the minor in Charleston when Aetna knew or should have known that he was an inpatient in Missouri at CALO.

January 17, 2011 to January 31, 2011 - Initial Treatment:

Mega Insurance as Primary Insurer

26. As to the initial treatment period of January 17, 2011 to January 31, 2011, which was preauthorized via telephone call between Aetna and a CALO representative, this claim for credit against AR's \$5,000 deductible was denied allegedly because insufficient information was given. This was incorrect as the CALO bills were sent on a proper form with the requested information.

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Aetna later paid CALO charges billed using this identical form with the same information. Aetna eventually paid its bill for this segment of treatment in whole or in part by a check received about five months later at CALO on July 5, 2011.

February 1 to February 28, 2011 Treatment:

Mega Insurance as Primary Insurer

27. The next CALO bill for services for February 1 to February 28, 2011 was denied because "the claim was not filed within the required time period." This contravenes Aetna's policy which purports to allow for a liberal extension of time in which to file claims and appeals. On page 29, for example, the policy states that written claims should be filed within 90 days of the loss. However, if the late filing is not the insured's fault, the claim should be filed as soon as possible. The policy sets forth a two-year deadline for filing claims, "[u]nless you are legally incapacitated." AR is a minor. Nonetheless, the claim was filed by CALO within 30 days and resubmitted again in March, 2011. Moreover, Aetna's own documents show that it was in its possession on April 26, 2011, which is well within Aetna's policy requirements. This bill was not paid until a check was received by CALO on August 29, 2011, over five months later.

March 1, 2011 to March 16, 2011 Treatment:

Mega Insurance as Primary Insurer

28. The March 1, 2011 to March 16, 2011 CALO bill was

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approved in the amount of \$85.00 as excess/secondary coverage. Later, CALO resubmitted the bill as a matter of course, probably assuming that because Aetna was regularly denying CALO's charges, it had denied this one also. Now Aetna denied the bill it had already approved, this time because AR can be treated more inexpensively elsewhere. CALO did not receive payment until May 20, 2011.

March 17, 2011 to March 27, 2011 Treatment:

Mega Insurance as Primary Insurer

29. A CALO bill for March 17, 2011 to March 27, 2011 was denied arbitrarily for reasons which changed over time. On May 26, 2011, Aetna denied the charges via an explanation of benefits form ("EOB"), allegedly because of inadequate information. However, the requested information had been given to Aetna previously both by CALO and David Rosenberg; after this fact was explained to Aetna, on June 20, 2011 Aetna now denied the claim for "one or more of the following reasons" and gave three new justifications: (1) Plan maximum or not covered under plan's provisions; (2) not eligible for service on date(s) services rendered; and/or (3) routine physical or other examination or preventative services. Aetna has never paid this bill, stating that the \$325 was owed by the Plaintiffs as co-insurance.

March 28, 2011 to March 31, 2011 Treatment:

Aetna Becomes Primary Insurer

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30. On or about March 28, 2011, Aetna became primarily liable for the health benefits due to exhaustion of Mega's policy. For the first time, Aetna refused to pay by stating that "Aetna has determined that all or a portion of this confinement could have been safely and adequately managed at an alternate level of care." Payment of CALO's charges for AR's treatment from March 28, 2011 to March 31, 2011 were refused. Eventually, Aetna reversed itself and paid this part of the claim by check dated December 13, 2012, nearly eight and one-half months after the billing period ended.

31. In a communication to David Rosenberg, Aetna also claimed that it had paid CALO \$13,538. However, Aetna had only paid \$4,200 for period Jan. 17, 2011 to Jan. 31, 2011, and \$85 for March 1, 2011 to March 16, 2011. In a subsequent email with Aetna's representative Donna Berger dated August 3, 2011, she admitted that Aetna had paid only \$4,285.

32. That AR's condition required specialized inpatient treatment was evident at the outset before his admission to CALO. Correspondence from his Charleston and SUWS care providers showing the failure of prior treatment were provided to or available to Aetna.

33. The need for inpatient care and the seriousness of AR's condition are, *inter alia*, shown in his CALO records which document use of a procedure called a "therapeutic hold." A therapeutic hold is an immediate, physical arrest of a patient done by staff members

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when the patient is physically aggressive toward others and/or is about to (or does) harm himself. From April 12, 2011 to July 25, 2011, for example, AR was physically aggressive toward staff or other patients and tried to (or did) harm himself on 18 separate days (including July 2, 14, 17, and twice on July 25). Therapeutic holds were necessary on 15 of these days.

34. Moreover, the need for in-patient care has been documented in other ways since his arrival at CALO. On November 7, 2011, AR's two therapists, namely Licensed Professional Counselor Amanda Gregory, MA and Psychiatrist Satnam Mahal, MD, set forth for Aetna a summary of AR's treatment and opined that if he returned home and/or resumed outpatient treatment, he would have likely harmed himself, his sister, brother, parents, and/or classmates. Gregory and Mahal gave no opinion as of that date when he would achieve enough stability to return home without harming himself, his family, or others.

April 1, 2011 to April 23, 2011 Treatment

35. In addition to Aetna's position that AR can be treated at a lower level of care and more cheaply elsewhere, Aetna also denied coverage for the April 1, 2011 to April 23, 2011 CALO bill claiming that AR's benefits are exhausted. However, the policy has no mental health maximum unlike some other coverages. When this was appealed, Aetna still refused to pay. Eventually, Aetna reversed itself and paid for this portion of treatment eight months later on December

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22, 2012.

April 23, 2011 to April 28, 2011 Treatment

36. Despite Aetna's denial of the April 1-23, 2011 bill on the ground that AR allegedly was now stable enough to be treated at a lower level of care, the bill for the April 24-30, 2011 CALO treatment was paid partially by check received on July 5, 2011 and the balance paid seven months later on December 13, 2011. Put another way, AR's prior treatment at CALO was medically unnecessary because he was stable enough to be treated at a lower level of care but his subsequent treatment was seen and paid because medically necessary.

May 1, 2011 to July 2, 2011 Treatment

37. AR's treatment charges for May 1, 2011 to July 2, 2011 were not paid. Aetna requested more medical records which were sent to Aetna by CALO on July 12, 2011. CALO bills for June 1, 2011 to June 30, 2011 bills also were not paid. David Rosenberg called Aetna and was told that the diagnostic codes were not on the claims form. However, all claims forms, including the ones sent previously, listed several diagnostic codes. Eventually, Aetna wrote a check to CALO for the May 1, 2011 to May 31, 2011 bills on January 18, 2012, over seven months later. CALO's bills for June 1, 2011 to July 2, 2011 have not been paid.

July 3, 2012 to July 31, 2012 Treatment

38. Bills for treatment from July 3, 2012 to July 31, 2012

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were denied upon Aetna's claim that AR can be treated at a lower level of care and more cheaply elsewhere. Aetna's denial was appealed twice, and upheld by Aetna in both appeals. They have not been paid, not have any further treatment bills been paid.

August 1, 2012 to October 31, 2012 Treatment, and AR's

Emotional Condition Today

39. Treatment charges from August 1, 2012 to October 31, 2012 were denied upon the ground that "Aetna has determined that all or a portion of this confinement could have been safely and adequately managed at an alternate level of care." Aetna has paid for no bills since this time, despite AR's ongoing treatment and mounting bills at CALO. Despite improvement, however, AR is far from ready to return home. AR's November and December 2011 home visits in Charleston were marked with outbursts of anger and violence, and his family does not feel safe. In November, AR was very angry and confrontational. He easily flew into a rage. On one occasion while slamming his fist against the car door, he broke the Rosenbergs' car door lock, necessitating repair. In December, AR's visit was characterized by worse incidents of rage, especially at his younger sister. He punched holes in his sister's wall and door, threatened to punch her, and warned that he would "make her pay." AR knocked a dent in his mother's car and kicked in the dashboard.

Appeals

40. After the claims denials and pursuant to Aetna's appeal

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procedures in the policy, on August 8th and 9th, 2011, the Plaintiffs timely appealed Aetna's first denials of benefits.

41. Aetna's policy requires that it shall respond to an appeal within 36 hours after its receipt when appeals involve concurrent care claim termination and for post-service claims within 30 calendar days after receipt of the appeal. However, the Defendant delayed and failed to respond to the Plaintiffs' appeal in a timely manner as required by Aetna's own policy. With Plaintiffs' unpaid bills rising at an alarming rate, on September 23, 2011 and October 18, 2011 Plaintiffs' counsel wrote Aetna to ask about its late decision on the appeal. David Rosenberg also called Aetna and asked why Aetna did not issue a ruling/decision on the Plaintiffs' appeal; he was told that this had been done and the appeal decision was mailed on October 5, 2011. Because the Plaintiffs and their attorney had still not received any response to the appeal, on October 26, 2011, counsel for the Plaintiffs wrote Aetna once again and asked why it had not responded. A copy of its denial dated October 5, 2011 with a "cc" to Plaintiffs' counsel was sent. However, the envelope sending it was dated October 27, 2011.

42. Aetna's letter entitled "Final Appeal Decision" dated October 5, 2011 denied the claim for all charges from April 1, 2011 to July 31, 2011 based upon the policy section "**General Exclusions and Limitations**" and for the reason that AR's treatment at CALO was

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not "medically necessary."

43. Also, in its "Final Appeal Decision" dated October 5, 2011, Aetna offered to provide free copies of records pertaining to the Plaintiffs' appeal, including the documents used by claims reviewers, specific rules and guidelines used, and similar information. On November 1, 2011, Aetna was contacted by mail and asked to provide certain claim documents. Although some information was sent in an Aetna report in mid-December 2011 and the external reviewer's report in mid-January 2012, it was incomplete.

Aetna's Expedited Independent External Review

44. Pursuant to Aetna's policy appeal rules and procedures, a second appeal and "expedited" external review from an independent reviewer was timely requested of Aetna by letter dated November 1, 2011.

45. Before the external review was assigned, Aetna on December 14, 2011 via a communication directly to the minor child at his home in Charleston, but not his attorney: (a) again denied benefits for the treatment period July 3, 2011 to July 31, 2011 upon the ground that AR's clinical condition as it relates to his aggression, violence, and ability to comply with treatment "does not meet LOCAT [Level of Care Assessment Tool] Guidelines for Residential Treatment" and thus his treatment could have been done at "a lower level of care or in another setting"; and (b) denied for the first time the policy period August 1, 2011 to August 31,

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2011 upon this same ground.¹

46. However, in the same December 14, 2011 communication mentioned in the prior paragraph sent directly to the child, but not his attorney, Aetna reversed its prior position and approved coverage for CALO charges from February 26, 2011 to July 2, 2011. Then, on January 6, 2012 via email to David Rosenberg but not his attorney, Aetna apologized for delaying in processing AR's claims, reversed itself once again and denied the May 1, 2011 to July 2, 2011 CALO treatment charges, and denied all charges through September 1, 2011. Finally, in February of 2012, Aetna sent the following email regarding the June treatment:

"This is in response to [AR's] claim for dates of service 06/01/2011-06/30/2011 in the amount of \$10,500.00 from Change Academy at Lake of the Ozarks. Your claim is in review. We are currently reviewing this claim for reprocessing. In general, claims are processed and completed within 10 business days. A revised explanation of benefits will be available shortly. Are you responsible for any charges? After we have completed the review of [AR's] claim, your plan benefits will determine the final responsibility."

47. National Medical Reviews, Inc. was assigned the expedited appeal. However, there was a delay of five to six weeks until December 16, 2011, before assigning the expedited case file to the physician reviewer at National Medical Reviews, Inc. No decision was made on the expedited review until January 16, 2012, over two months after the expedited review was requested.

¹ Aetna recorded on this same document that its next scheduled review of the denial was to be held on July 3, 2011, which was five and one-half months earlier.

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48. Aetna maintains a list of an approved panel of doctors. As part of its financial incentive to motivate such doctors to affiliate with Aetna and treat Aetna patients, it advertises that the doctors will receive "competitive compensation" and other benefits. Thus, there is an inherent conflict when an Aetna physician acts as an "independent" medical reviewer.

49. National Medical Reviews, Inc. stated in its report that the independent reviewer, whose name neither it nor Aetna has disclosed, "verified that she . . . has no conflicts of interest with any known party to this case." However, upon information and belief, the Plaintiffs' case was reviewed not by an independent reviewer but instead by a male psychiatrist affiliated with Aetna as one of its approved panel of doctors; moreover, the reviewing psychiatrist's own report shows that he knew Aetna was the client.

50. Aetna either knew or should have known that the aforementioned psychiatrist was a member of its affiliated panel of doctors. Aetna has a duty to ensure that there are policies and procedures in place with its medical reviewers so that doctors within its own healthcare network are not assigned to review Aetna cases and thus conflicts such as this one do not arise.

51. In his report, which interpreted the language in Aetna's insurance policy and applied his medical opinions to it, the reviewing psychiatrist's opinion adopted July 3, 2011 as the day when AR's treatment at CALO became no longer "medically necessary,"

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which was the exact day chosen by Aetna in its latest decision on the matter.

52. The medical reviewer's report about AR's aggressive and sometimes violent behavior was directly contradictory to the records in Aetna's possession.

Failure to Pay CALO Bills in a Timely Manner

53. The **General Provisions** section of the policy (emphasis added) provides that:

[b]enefits will be paid as soon as the necessary written proof to support the claim is received. All benefits are payable to you. However, Aetna has the right to pay any health benefit to the service provider. This will be done unless you have told Aetna otherwise by the time you file the claim. Any unpaid balance will be paid immediately upon receipt by Aetna of due written proof.

Aetna delayed in paying claims, in most cases, from five- to eight-and-a-half months. Upon information and belief, Aetna has yet to pay CALO for treatment charges from June 1, 2011 to July 2, 2011, even though it agreed on December 14, 2011 that it owes them, and just issued a draft for the May 1, 2011 to May 31, 2011 treatment on January 18, 2012, even though it agreed on December 14, 2011 that it owed them also. Total outstanding bills as of today, 2012 are approaching \$100,000.

54. The Defendant knows or should know that CALO's huge

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unpaid bills are a significant additional worry that the Plaintiffs must contend with at a time when they are already emotionally and financially vulnerable and that each inconsistent position, including Aetna's roller-coaster ride of denials and approvals, causes further frustration, distress, and worry on the Plaintiffs' parts. The Defendant has known all along that independently of the outstanding financial costs for CALO's treatment, the Plaintiffs David and Marcelle Rosenberg suffer worry and stress both about financial issues and that their son's mental-health and emotional disorders will go untreated, which in Marcelle's case were the subject of counseling.

FOR A FIRST CAUSE OF ACTION
(Negligence)

55. The Plaintiffs reaffirm all prior paragraphs as if fully stated herein verbatim.

56. A mutually binding contract of insurance existed between the Plaintiffs and the Defendant at all times relevant.

57. Aetna, without reasonable cause, adequate investigation, and in bad faith, refused to timely pay the Plaintiffs' claims in breach of the implied covenant of good faith and fair dealing arising on the contract.

58. The Defendant owes the Plaintiffs a duty to use due care and in good faith to investigate, evaluate, process, and timely pay their covered claims, and to properly communicate with the Plaintiffs in a timely manner about the claims. The Plaintiffs are

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also entitled to not only security from financial loss but the security of knowing that Aetna will deal fairly and in good faith. See *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 473 S.E.2d 52 (1996); however, Aetna's contradictory and erratic claims handling has made the Plaintiffs profoundly insecure.

59. The Defendant negligently and wilfully breached these duties to the Plaintiffs by failing:

- A. to monitor the Plaintiffs' claims and process them in a reasonable, consistent, and timely manner;
- B. to pay covered claims in a timely manner;
- C. to follow its own internal claims-handling guidelines and procedures, or if lacking such guidelines and procedures, to create and enforce the same, including policies and procedures ensuring that medical reviewers are truly independent;
- D. to follow the policy's procedures and provisions and to use an independent medical reviewer not affiliated with the Aetna network of providers;
- E. to communicate with the Plaintiffs in a timely and truthful manner and provide information and answers to their requests for information;
- F. to investigate and hire employees with the proper knowledge and training to evaluate the Plaintiffs' claims and to supervise them properly so that they adjust the

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claims in a reasonable and truthful manner;

G. to refrain from using its superior resources and access to information to keep the Plaintiffs from evaluating their own claims in dealing with the Defendant; and

H. to supply complete records to its appellate reviewing agency.

60. As a direct and proximate result of the Defendant's negligent, wilful, and reckless actions, the Plaintiffs have and will continue to suffer great mental stress and worry over the tremendous financial obligations imposed on them from the Defendant's erratic refusals to pay CALO's bills and the possibility that their son will not receive proper treatment, and have and continue to be in precarious financial straits because of the unpaid treatment bills.

61. The Plaintiffs therefore demand that the Defendant pay their actual damages, including consequential damages, and punitive damages in an amount to be determined by the jury, prejudgment interest, and the costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION
(Statutory Bad Faith Claim: S.C. Code § 38-59-40)

62. The Plaintiffs reaffirm all prior paragraphs as if fully stated herein.

63. A mutually binding contract of insurance existed between the Plaintiffs and the Defendant at all times relevant.

64. Aetna, without reasonable cause and in bad faith, failed

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to pay the Plaintiffs' claims for over ninety days upon demand, although the claims are covered by the policy.

65. Its refusal to pay the claims in a timely manner was in bad faith in that the Defendant put its own interests ahead of the interests of its insureds.

66. As a direct and proximate result of the Defendant's improper acts, the Plaintiffs suffered monetary loss and are entitled to payment of their claim in an amount to be determined by the jury, for prejudgment interest, and for reasonable attorneys' fees up to one-third of the total judgment.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

67. The Plaintiffs reaffirm all prior paragraphs as if fully stated herein.

68. The policy is a contract for insurance in which the Defendant agrees to pay benefits and perform adjusting services to the Plaintiffs according to its terms in return for payment by the Plaintiffs of insurance premiums.

69. The Plaintiffs have paid all premiums as they came due and performed their other required contractual obligations.

70. The Defendant failed to adhere to its contractual obligations under the policy by evaluating and paying covered claims and also in the other ways mentioned above.

71. As a direct and proximate result of the Defendant's contractual breaches, the Plaintiffs suffered monetary loss by way

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of debt and unpaid bills owed to CAMO and are entitled to repayment of those monetary losses, consequential damages as shown by the facts pled above, all in an amount to be determined by the jury, plus prejudgment interest.

WHEREFORE, the Plaintiffs pray, in amounts to be determined by the Court and jury in excess of \$75,000: (a) for actual damages and punitive damages on their first cause of action; (b) for actual damages and reasonable attorneys' fees on their second cause of action; (c) for actual damages on their third cause of action; (d) for prejudgment interest, litigation costs and fees on all causes of action; and (d) for such further relief as the Court and jury deem just and proper.

GRIMBALL & CABANISS, L.L.C.

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FEDERAL COURT ID. #4879

Charleston, South Carolina

Dated: February 11, 2012



Reg #000013
Anthony E. Keck, Director
Nikki R. Haley, Governor

September 17, 2012

Mr. E. Warren Moise
Grimball & Cabaniss, LLC
Attorneys at Law
473 Savannah Highway
Charleston, SC 29407

Re: Rosenberg, et al. v. Aetna, 2:12-207-DCM
Your File 29214.3

I apologize for the delay in getting back to you. This has been difficult to assess, and we are pulled in different ways. On the one hand, we can easily see the benefit if you recovered from Aetna. On the other hand, we tend to agree with Aetna that the placement in the CALO facility was precipitous and unnecessary.

There were two (2) separate final decisions about Allen's coverage that were made by the Department. The first decision was that Allen was in an out of home placement that, for financial eligibility purposes, required that he be treated as an individual. In other words only his income and not also that of his parents would count in the eligibility determination. Since he has no personal financial resources, the Department's Appeal Division determined that he was eligible for many Medicaid services, such as doctor appointments or medications. In other words he got a Medicaid card.

Some services require a prior authorization from the agency before the agency will agree to make vendor payments for the service. One of those services is the type of placement similar to that where Allen is. In addition, an out-of-state such placement is required to be processed through S.C. Code Ann §63-11-1150. These authorizations were not sought by Allen's parents before he was placed at CALO. By the time any of these authorizations were sought, our Medical Director thought it best to not disturb the course of treatment at CALO. However, he would have to testify that Allen's placement at CALO would not have been approved, and was originally unnecessary because appropriate care would have been available within South Carolina. We understand that to be one basic position of Aetna.

Please contact me if you would like to discuss this situation. My direct is (803) 898-2791.

Sincerely,

Richard G. Hepfer
Deputy General Counsel