

Kirsch v. HBCBS Administration  
P.O. Box 3560  
Portland, OR 97208-3560

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MICHAEL H. KIRSCH, D.D.S., Individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

HORIZON BLUE CROSS BLUE SHIELD OF NEW  
JERSEY,

Defendant.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION ESSEX COUNTY  
DOCKET NO. ESX-L-109-08

CIVIL ACTION

**NOTICE OF CLASS ACTION**

**This Notice May Affect Your Rights.**

**Please Read Carefully.**

**IF YOU ARE AN INDIVIDUAL DENTIST OR DENTAL GROUP PARTICIPATING WITH HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY (“HORIZON”) WHO PROVIDED SERVICES TO ANY PERSON WHO HAS BEEN INSURED BY HORIZON AT ANY TIME SINCE JANUARY 7, 2002 PLEASE READ THIS NOTICE CAREFULLY. THIS CLASS ACTION MAY AFFECT YOUR RIGHTS.**

**I. WHY YOU SHOULD READ THIS NOTICE**

Your rights may be affected by the class action lawsuit known as Kirsch v. Horizon Blue Cross Blue Shield of New Jersey, Docket No. ESX-L-109-08, now pending in the Superior Court of New Jersey, Essex County (located in Newark, New Jersey), referred to in this Notice as the “Litigation.” This Notice is to inform you of the Court’s decision to certify the Litigation as a class action for the following Plaintiff Class:

All participating individual dentists and dental groups, regardless of specialty, who provided services for which Horizon Blue Cross Blue Shield of New Jersey (“Horizon”) had a payment obligation, to any person who was insured by Horizon on the date of service in the class period of January 7, 2002 through the present.

## **II. WHAT THIS LITIGATION IS ABOUT**

This case was originally filed by an oral and maxillofacial surgeon, Michael H. Kirsch, D.D.S. Dr. Kirsch practices in Caldwell, New Jersey. Dr. Kirsch, on behalf of himself and on behalf of all individual dentists and dental groups, filed this Litigation against Horizon asserting, among other causes of action, breach of contract alleging that Horizon failed to pay claims submitted by Class Members through one or more of the following alleged improper claims processing practices: (1) Refusing to pay for procedures by improperly “bundling” them with other procedures performed on the same date of service; (2) Paying less than appropriate compensation for procedures by changing the corresponding procedure codes submitted by the provider to codes for lower paying procedures of lesser complexity -- a practice known as “downcoding” -- or by simply paying less for the codes actually submitted as if the provider had billed for a less complex procedure to begin with; (3) Denying appropriate compensation where additional treatment was required due to the complexity of the condition or other unrelated conditions by refusing to recognize and/or process code “modifiers” submitted by the provider; and (4) Failing to pay providers the appropriate fees they expected in accordance with their contracted fee schedules. Dr. Kirsch seeks damages and injunctive relief on behalf of himself and on behalf of the class for Horizon’s alleged continuing and systematic failure to make appropriate payment of claims for dental services, including those processed under medical coverage insurance plans. Horizon denies the allegations contained in the Litigation and contends that its claim processing and payment practices were at all times proper and lawful. Horizon also asserted a counterclaim alleging that Dr. Kirsch engaged in improper and fraudulent billing practices. Dr. Kirsch denies the allegations contained in the counterclaim and notes that there is no counterclaim filed against any other Class Member.

### **A. Plaintiff’s Position**

Throughout the class period, Horizon has consistently breached the contracts of its participating dentists and dental group providers by uniformly processing claims through the same automated computer software that arbitrarily denies and reduces compensation for the dental and medical services these practitioners render to members of Horizon’s insurance plans. The centerpiece of this case is the common claims adjudication practices carried out by Horizon’s computer systems that are responsible for depriving dental providers of proper reimbursement. These computer systems do not process claims in accordance with the terms of the provider agreements -- that is, based on the claims information submitted by the dentist and his/her applicable fee reimbursement schedule. Rather, Horizon’s computer systems, among other things, alter, manipulate, eliminate, bundle and downcode claims submitted by providers in order to achieve one common, class-wide goal: to save Horizon substantial amounts of money and to pay less to dentists in breach of their provider agreements with defendant. This is done in an across-the-board fashion, not based upon any individualized review of claims or clinical records for the services provided, but rather by pre-programmed, arbitrary computer software that is not based on standard medical/dental or objective claims processing practices.

The failure of Horizon to pay claims appropriately has denied dental providers a steady cash flow and forced providers to waste their own time in tracking down incorrectly paid claims as well as necessitating the hiring of additional staff simply to follow-up on claims. Horizon’s actions have significantly increased provider office overhead and have negatively impacted the providers’ ability to maintain their dental practices and their capacity to provide quality dental care to the people of this State.

Dr. Kirsch denies the counterclaim asserted against him individually by Horizon and asserts that it is without merit. Dr. Kirsch maintains that, at all times, he engaged in appropriate billing and claims submission practices.

This class action is the second certified dental class action brought by Dr. Kirsch against Horizon challenging defendant’s claims processing practices. The first case, Kirsch v. Horizon Blue Cross Blue Shield of New Jersey, Docket No.ESX-L-4216-05 (“Kirsch I Prompt Payment Litigation”), concerns Horizon’s violations of the New Jersey prompt payment laws. That case has a tentative trial date in 2011. The allegations in this second class action are different and unrelated to the claims being litigated by the Class in the Kirsch I Prompt Payment Litigation.

### **B. Horizon’s Position**

Horizon denies Dr. Kirsch’s allegations. Horizon’s claims processing and payment practices, including the use of automated systems to process claims are fully consistent with the terms of its provider agreements and all applicable laws and regulations. Horizon’s automated claims adjudication practices are the only methods available to timely process the millions of claims it annually receives for services provided to its subscribers and insureds in an efficient and equitable manner. Horizon denies the allegations that it utilizes computers and software programs for the purpose of paying providers less for their services than Horizon is obligated to pay. Horizon’s claims processing practices also include manual review of claims, and review of clinical documentation as necessary for individualized adjustment of claims in accordance with its provider agreements and all applicable laws and regulations.

It would be impossible for Horizon to manage the volume of claims it receives without the assistance of computers and software designed to perform claims processing functions efficiently and accurately. Horizon claims processing, both automated and manual, is used to determine the amount of coverage owed to its subscribers and insureds and to advise self-insured group clients of their payment obligations. Horizon is obligated to properly manage insurance premiums and healthcare costs for its customers and to assure that it only reimburses services covered by its health benefit plans. Horizon must deal with incomplete, inaccurate and, sometimes, misleading and fraudulent provider claims. In that regard, the same court that has certified this class has permitted Horizon to bring claims against Dr. Kirsch for improper balance billing of Horizon subscribers/insureds and for fraudulent claims submission revealed in examination of his patient records.

Dr. Kirsch's allegations that Horizon's claims processing practices do not conform to industry standards are without merit.

### **C. Class Certification**

A contested class certification hearing was held on September 7, 2010. On September 16, 2010, the Court certified a class of individual dentists and dental groups who rendered services to Horizon insureds and appointed Dr. Kirsch to represent the Plaintiff Class, of which you may be a member.

### **III. WHAT RELIEF PLAINTIFF IS SEEKING FOR THE CLASS**

Dr. Kirsch is seeking compensatory damages, punitive damages and injunctive relief on behalf of himself and other members of the Class in accordance with applicable New Jersey law.

Horizon generally denies the Plaintiff's allegations and contends that its claims processing practices and claims payment practices are fully consistent with the terms of the applicable provider agreements and all applicable laws. The Court's Class Certification Order does not decide the merits of Plaintiff's claims or Horizon's defenses, but rather only certifies this Litigation as a class action. The Court has not ruled on the merits of the Plaintiff's claims or the denials and other defenses asserted by Horizon. **THERE IS NO ASSURANCE THAT A JUDGMENT WILL BE GRANTED FOR PLAINTIFF AND THE CLASS, OR, IF GRANTED, THAT IT WILL BE COLLECTED IN WHOLE OR IN PART. THERE IS NO ASSURANCE THAT HORIZON WILL NOT BE ABLE TO OFFSET AGAINST CLASS MEMBERS SUCH SUMS AS MAY BE PROVED TO BE IMPROPER PAYMENTS OR OVERPAYMENTS MADE TO THEM BY HORIZON DURING THE CLASS PERIOD.**

### **IV. AM I AFFECTED BY THIS LAWSUIT?**

You are a member of the Class certified by the Court on September 16, 2010 if you were or are:

All participating individual dentists and dental groups, regardless of specialty, who provided services for which Horizon Blue Cross Blue Shield of New Jersey ("Horizon") had a payment obligation, to any person who was insured by Horizon on the date of service in the class period of January 7, 2002 through the present.

### **V. PLAINTIFF AND CLASS COUNSEL**

The Court appointed Plaintiff, **Michael H. Kirsch, D.D.S.**, to act on behalf of the Class. The Court also appointed Class Counsel to represent the interests of the Class. The name of the attorney and the firm designated to represent the Class are **Eric D. Katz and Mazie Slater Katz & Freeman, LLC**. Class Counsel are experienced litigators and trial attorneys. The lawyer and his firm represent various types of claimants. For example, Class Counsel and his firm have prosecuted or are prosecuting numerous other types of class actions including the Kirsch I Prompt Payment Litigation noted above. During the Contested Class Certification hearing, the Court determined that Class Counsel could adequately represent the Plaintiff and the Class. If you have any questions regarding the type of litigation in which Class Counsel is involved, you may contact Class Counsel at the address and e-mail address listed below, or review their websites at [www.provideradvocate.com](http://www.provideradvocate.com) and [www.mskf.net](http://www.mskf.net). You will not be charged for Class Counsel's services. Rather, if Class Counsel obtains a recovery for the Class, Class Counsel will apply to the Court for payment of reasonable attorneys' fees and costs to be deducted from the funds recovered before the net proceeds are distributed to Class members.

You have the right to hire your own attorney. If you do so, you will be responsible for paying the attorneys' fee. You have the right not to participate, or to exclude yourself ("opt-out") from the Class. The procedures and deadlines for excluding yourself from the Class are described in the next section of this Notice. You also have the right to seek the Court's permission to intervene or appear in this lawsuit.

**VI. DO I NEED TO DO ANYTHING NOW?**

**TO REMAIN IN THE CLASS:** If you want to remain a member of the Class, **YOU DO NOT HAVE TO DO ANYTHING AT THIS TIME.** If Plaintiff is successful after a trial on the merits or if there is a settlement, you may then be able to participate in any recovery obtained for the Class through additional proceedings or through a process to be administered by the Court. If you remain part of the Class, you will be notified of any recovery and the procedures through which you may seek participation in the amount recovered, if any. *As a Class member, you will be bound by all Orders of the Court, including Orders which may be adverse to the Plaintiff. Furthermore, as a Class member, any currently existing claims or causes of action as alleged in, or encompassed by, this Lawsuit will be forever resolved by a final judgment in this case.*

Participating in this lawsuit will not terminate or affect any of your provider agreements with Horizon.

**EXCLUDING YOURSELF FROM THE CLASS:** If you want to be excluded from this Class, you must send a letter expressly stating that you wish to be excluded from the Class. This letter must be sent to the Notice Administrator at the address listed below. The letter must be **postmarked no later than April 1, 2011**, and addressed to:

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If you choose to exclude yourself from the Class, you will not be allowed to participate in any recovery that might be paid as a result of trial or settlement of this Litigation. You will not be bound by any decision in this Litigation favorable to Horizon; and, you may present any claims you have against Horizon by filing your own lawsuit, or you may seek to intervene in this Litigation. Should you exclude yourself from the Class, you will not be bound by any of the Orders of the Court.

**VII. FURTHER PROCEEDINGS**

As noted, Horizon denies all of the allegations and claims made by Plaintiff and the Class. Substantial discovery and other pretrial proceedings remain to be done. You may communicate with Class Counsel if you have evidence you believe would be helpful to establish the Class claims, and you may be asked by the parties to provide information relevant to the case. Any information or evidence you provide to Class Counsel may be subject to discovery by Horizon.

**VIII. WHO CAN I CONTACT WITH QUESTIONS?**

**PLEASE DO NOT CALL THE COURT, THE ESSEX COUNTY CLERK'S OFFICE OR HORIZON.** If you have questions regarding this Notice or the Litigation to which it refers, please contact Class Counsel, **Eric D. Katz at Mazie Slater Katz & Freeman, LLC, 103 Eisenhower Parkway, Roseland, New Jersey 07068, or e-mail ekatz@mskf.net.** Those pleadings and other papers filed in this Lawsuit that may be disclosed are available for inspection and copying at the office of the Essex County Clerk.

DATED: February 15, 2011

/s/ Hon. Paul J. Vichness, J.S.C.