

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Nos. 945, 957, & 958 CD 2013

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DENTAL BENEFIT PROVIDERS, INC. *et al.*, Petitioners  
v.  
JAMES EISEMAN, JR., , et al. Respondents

AIETNA BETTER HEALTH, INC. *et al.*, Petitioners  
v.  
JAMES EISEMAN, JR., *et al.*, Respondents

DEPARTMENT OF PUBLIC WELFARE., Petitioner  
v.  
JAMES EISEMAN, JR., *et al.*, Respondents

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COMMONWEALTH COURT  
OF PENNSYLVANIA

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BRIEF of the DEPARTMENT OF PUBLIC WELFARE

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Petition for Review of the Final Determination issued by the  
Office of Open Records, dated May 7, 2013,  
OOR Docket No. AP 2012-2017

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Date Filed: August 20, 2013

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Pa.R.A.P. No. 2137 <sup>1</sup>	<i>passim</i>
Pa.R.A.P. No. 2188	7

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<sup>1</sup> In pertinent part, Pennsylvania Rule of Appellate Procedure No. 2137, which states in pertinent part that “[i]n cases involving more than one appellant ... including cases consolidated for purposes of the appeal pursuant to Rule 513 ... any appellant ... may adopt by reference any part of the brief of another.”

## **STATEMENT OF JURISDICTION**

Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the “Statements of Jurisdiction” set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.

**ORDER IN QUESTION**

Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the statements setting forth the Order in Question set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.

## **SCOPE AND STANDARD OF REVIEW**

Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the statements of the scope and standard of review set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.

**STATEMENT OF THE QUESTIONS INVOLVED**

Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the statements of questions involved that are set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.

**STATEMENT OF THE CASE**

Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the statements of the case set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.



## **SUMMARY OF ARGUMENT**

Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the summaries of argument set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.

## ARGUMENT

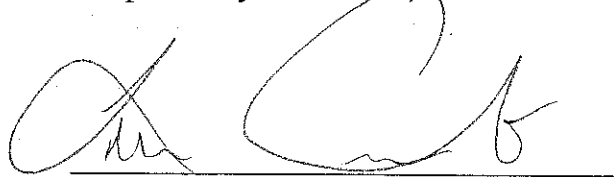
Pursuant to Pa.R.A.P. No. 2137, the Department of Public Welfare (DPW) incorporates by reference the arguments set forth in the briefs filed by the Petitioners in the appeals docketed at 945 CD 2013 and 957 CD 2013.

By way of further explanation, DPW does not claim that any of the records in dispute in the PILCOP II appeals constitute DPW's intellectual property. In short, DPW does not have a dog in this fight. However, Pa.R.A.P. No. 2188 states that, "[i]f an appellant fails to file his ... brief ... within the time prescribed by these rules ... an appellee may move for dismissal of the matter." In order to eliminate the possibility that such a motion might prevent the adjudication of the issues on the merits, DPW has filed this brief.

## CONCLUSION

Assuming, *arguendo*, that the Court holds that some or all of the withheld documents are “public records,” and because the other Petitioners are parties to this consolidated appeal and, therefore, have subjected themselves to the Court’s jurisdiction, and in order to eliminate any dispute over the degree to which DPW has control over any records not in its actual possession or custody, DPW requests that in its order the Court direct the Petitioners other than DPW to either (1) provide all responsive documents directly to the Respondents, without the need for DPW to serve as a middleman or conduit for those records; or (2) provide all responsive records to DPW, and ordering DPW to provide these documents to the Requesters.

Respectfully submitted,



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August 20, 2013

**CERTIFICATE OF SERVICE**

Department of Public Welfare, :  
Petitioner :  
 :  
v. : No. 958 CD 2013  
 :  
James Eiseman, Jr., Esquire :  
Respondent :

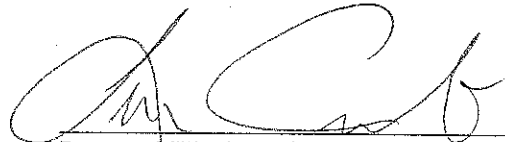
**I, Leonard W. Crumb, hereby certify that I am this day serving the foregoing PETITIONER'S BRIEF upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121**

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