

For Immediate Release  
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## **Response to Aetna U.S. Healthcare's "Statement of Facts"**

**It has now been approximately three weeks since a San Bernardino County jury reached a verdict in this case.**

Since that day, instead of showing any remorse whatsoever for its conduct, Aetna U.S. Healthcare has maligned the trial judge as politically motivated, insensitively referred to Teresa Goodrich as a weeping widow, and libelously labeled plaintiff's counsel, Michael J. Bidart, as a skillful ambulance chaser. Mr. Bidart, in fact, was a personal friend of the decedent, David Goodrich, and had been requested to take the case by the San Bernardino County District Attorney, Dennis Stout.

Then, adding insult to injury, Aetna U.S. Healthcare issues a Statement of Facts which was circulated on the Internet. The Statement of Facts may be what Aetna wishes the facts were. Following is an absolutely, factually supported, true Statement of Facts which is substantiated by the trial transcript.

The Stern family held a press conference this morning at the Simon Weisenthal Center in West Los Angeles to announce the filing of their insurance bad faith lawsuit that includes a demand for \$125 million in punitive damages. The suit, filed in Los Angeles Superior Court, is the first Holocaust-era lawsuit filed by an individual family. It caps a decades-long struggle by the Stern family to recover life insurance proceeds from Assicurazioni Generali of Italy, one of Europe's largest insurers. Generali sold Moshe Stern, the family patriarch, several life insurance policies prior to WWII that the Stern family now estimates are worth \$10 million.

**Aetna's False and Misleading Statement:**

In June 1992, Mr. Goodrich sought emergency medical treatment after collapsing at work. He was admitted to the hospital and treated. Although the hospital was not in his Aetna HMO network, Aetna paid the bills due to the emergency nature of the treatment.

**The Truth:**

Aetna's statement that it paid the bills for David's emergency treatment despite the fact that the hospital was not in his Aetna HMO network is a clumsy attempt to make it sound as though Aetna was doing David a favor by paying for his emergency care and, to that extent, is patently misleading: Under both federal and California law, Aetna was required to pay for all emergency treatment received by a member, including David, whether the treatment was provided at a network facility or not.

And, notably, Aetna did not approve that payment until September 4, 1992 -- three months after the charges were incurred.

**Aetna's False and Misleading Statement:**

Mr. Goodrich's primary care physician, Dr. Richard Brown, referred him to a specialist, Dr. Joseph Dotan, who performed surgery on June 25, 1992 to remove a mass from Mr. Goodrich's stomach. This procedure was covered by Aetna. A biopsy revealed Mr. Goodrich had a rare form of stomach cancer.

**The Truth:**

Again, Aetna's statement implies that it did David a favor by paying for Dr. Dotan's surgery bills. In fact, Dr. Dotan was an in-plan, network provider under contract to Aetna and Aetna was required, under Aetna's contract with Primecare Medical Group of Redlands, the medical group David was assigned to, to pay for that treatment.

Aetna's False and Misleading Statement:

On July 28, Dr. Dotan referred Mr. Goodrich to an out-of-network hospital, City of Hope, for a consultation regarding his cancer. Aetna approved the out-of-network referral, and Mr. Goodrich scheduled an appointment at City of Hope for Sept. 3, 1992.

The Truth:

There are many problems with Aetna's statement on this issue:

Dr. Dotan, David's in-plan surgical oncologist told David and his wife, Teresa, that David's form of cancer was very rare and that he did not have vast experience with it .

Dr. Dotan submitted David's case to the Redlands Community Hospital Tumor Board, the Chairman of which was also an Aetna in-plan oncologist. The Chairman of the Tumor Board also concurred that David's cancer was very rare and he expressed his opinion in his deposition in the case that there was not a single doctor in the Redlands medical community who was qualified to treat it.

Dr. Dotan and the Tumor Board recommended that David be sent to City of Hope for consultation about how to treat the tumor. But Dr. Dotan could not simply authorize David's referral to City of Hope. Instead he was required to obtain authorization for the referral from Aetna, through the medical group, Primecare. To that end, on July 28, 1992, Dr. Dotan requested a referral for David to see a doctor at the City of Hope. The referral for a consultation was approved on August 5, 1996. David was not told that the consultation had been approved until August 11. At this point, David was more than two months post-collapse and nearly one month post-diagnosis.

Aetna's False and Misleading Statement:

On Sept. 3 at City of Hope, Dr. James Raschko met with Mr. Goodrich and told him he might be a candidate for a treatment program combining high-dose chemotherapy with a bone marrow transplant that, for his condition, was considered experimental. City of Hope scheduled him to be evaluated on Oct. 2, with the first stages of the bone marrow transplant procedure to begin on Oct. 28.

The Truth:

Dr. Raschko did not tell David that he might be a candidate for a bone marrow transplant. As reflected in Dr. Raschko's medical records, Dr. Raschko considered David a perfect candidate for the proposed treatment.

Whether the bone marrow transplant was considered experimental or not is irrelevant. Under California law, every HMO is required to issue an Evidence of Coverage and Disclosure Form to each of its members. The EOC, as it is commonly called, is required to set forth all the benefits provided and must disclose all of the exclusions from coverage and limitations on coverage. Aetna's 1992 EOC did not contain an exclusion for experimental procedures. Thus, even if the treatment were considered experimental, Aetna was required to cover it.

If Aetna, Primecare and the plan doctors had sent David to City of Hope earlier, he obviously would have

been able to begin the treatment process before the cancer metastasized.

#### Aetna's False and Misleading Statement:

On Oct. 6, 1992, Dr. Raschko informed Mr. Goodrich that a CT scan performed on Oct. 2 showed he was not a candidate for the proposed treatment as his cancer had metastasized to his liver. By the time Aetna received the request for experimental treatment two days later, on Oct. 8, the request for coverage was moot because plans for the treatment had been canceled. Dr. Raschko testified that no time delay had any negative effect on Mr. Goodrich's ability to qualify for the high-dose chemotherapy. Unfortunately, at no time did Mr. Goodrich ever become a candidate for this treatment.

#### The Truth:

Aetna did not first receive the request for the bone marrow transplant on October 8. Under its contract with Aetna, Primecare was obligated to process treatment requests and was therefore Aetna's agent for that purpose. Primecare -- and thus Aetna -- first received the request for authorization of the treatment no later than September 29. At that point, David's request for treatment was forced through a nightmarish consideration process that would be subsequently repeated later with regard to other treatment requests:

David's primary care physician ( PCP ) had to refer David to an in-plan oncologist for assessment of whether the treatment was appropriate.

The in-plan oncologist supported the use of the bone marrow transplant for David's condition, believed that it made "good therapeutic sense," noted that there was no "standard" therapy available and that bone marrow transplants had been utilized for years and were not experimental.

The in-plan oncologist had to refer David back to the PCP.

The PCP then had to submit an authorization request to Primecare.

Primecare's utilization review nurse was not authorized to approve treatment at an out-of-plan facility and so had to refer the treatment request to Primecare's medical director.

Primecare's medical director also was not authorized to approve this treatment at an out-of-plan facility and so was required to refer the request to Aetna's local medical director.

Aetna's local medical director was uncertain about approving the treatment request and referred the request to Aetna's home-office medical director in Hartford, Connecticut.

Aetna's home-office medical director considered the procedure experimental -- even though there was no experimental exclusion in David's plan and even though the in-plan oncologist did not consider it experimental. Under Aetna's own internal policies, the home-office medical director was required to send any treatment requests to Aetna's home-office Technology Assessment Department before denying a treatment request on the basis that it was experimental. The treatment request was, therefore, sent to the Technology Assessment Department.

The head of Aetna's home-office Technology Assessment Department reviewed the request and, because of his uncertainty as to whether the treatment would provide a medical benefit to David, referred it to the Department's consultant.

The consultant expressed the opinion that the treatment was experimental and not covered -- even though there was no experimental exclusion in the EOC.

The head of the Technology Assessment Department then sent the treatment request to an outside medical consultant group, Medical Care Ombudsman Program ( MCOP ).

The MCOP then sent the treatment request to three oncology consultants for review.

The three oncology consultants concluded that the treatment was experimental and sent their recommendation to MCOP that it not be provided to David.

MCOP sent its recommendation that the treatment be denied to Aetna's Technology Assessment Department.

The Technology Assessment Department issued a memorandum stating that it would deny the treatment as being experimental, and then requested that the coverage language of the plan be provided.

The Technology Assessment Department sent its denial of the treatment to the Aetna home office medical director.

The home office medical director sent the denial to the Aetna local medical director.

The local Aetna medical director sent the denial to the Primecare medical director.

The Primecare medical director sent the denial to the Primecare utilization review nurse.

The Primecare utilization review nurse sent the denial to David Goodrich -- on November 18, 1992. This was two and one-half months after David's original consultation at the City of Hope, nearly a month after he was to have started the bone-marrow transplant procedure and four months after his diagnosis.

The denial was based on the fact that the treatment was deemed experimental -- even though there was no exclusion in the plan precluding coverage for experimental treatments.

And, during this entire period of time, Aetna/Primecare's own standards required a 48-hour turnaround time for the determination, as did the NCQA.

Aetna's False and Misleading Statement:

Nevertheless, Aetna went forward with the original request and had it reviewed by independent medical experts selected by Grace Powers Monaco, a well-known patient advocate. They found that there was no hope of the experimental procedure benefiting Mr. Goodrich.

The Truth:

It is nonsensical for Aetna to say that despite the fact that David's cancer had metastasized and he could no longer qualify for City of Hope's bone marrow transplantation protocol, it decided to nevertheless go forward with the original request for treatment. As evidenced by the above outline of the process, the process had been started before the metastasis was discovered and the cumbersome and snail-like procedure merely lumbered its way along its pre-determined path. Aetna's communications with its own doctors were simply so lacking that it did not know that the proposed treatment was no longer viable.

#### Aetna's False and Misleading Statement:

Between October 1992 and January 1993, Mr. Goodrich chose to pursue conventional chemotherapy treatment with City of Hope -- the out-of-network facility -- without authorization. City of Hope never charged Mr. Goodrich for this treatment. The same courses of treatment were approved by Aetna for coverage at in-network facilities, but Mr. Goodrich declined to avail himself of that treatment.

#### The Truth:

It is false to say that David simply chose to pursue standard chemotherapy to treat his metastatic cancer. In fact, Aetna broke its specific promises to David by failing to discover any other potential treatments for him.

In its marketing materials and in its EOC, Aetna specifically promised David, as well as the other plan members, that it was dedicated to keeping David healthy, and helping to cure him when he got sick; Aetna promised to do more; it promised that it would provide David with comprehensive health services designed with [his] personal health in mind; that Aetna and its physicians would coordinate all necessary medical services. . . . that they would be directing and arranging [his] health care services; that they would coordinate all [his] health care needs. Even more significantly, Aetna represented to its members in the EOC that the Primary Care Physician listed on each member's card has accepted the responsibility for that member's health care. Similarly, in defining Primary Physician, the disclosure form states that the Primary Physician has overall charge of medical rendered to Members , , . and . . . directs the majority of health care services provided to such Members.

Although there was another option for treating David's liver metastasis -- cryoablation (freezing) of the liver lesions -- neither Aetna nor its doctors ever did anything to find out about that, or any other, alternative. Despite its promises, Aetna did not direct and arrange David's care or coordinate his health care needs. Aetna abdicated its responsibility for David's care.

David's treating doctor, Leland Foshag, M.D., who is a nationally renowned specialist in treating cancers that have metastasized to the liver and who eventually performed the cryoablation surgery on David, testified that if David had received the cryoablation surgery six to nine months sooner, David would have lived 15 to 20 months longer than he did. But Aetna stripped him of that chance by not even bothering to find out how to treat David's condition.

Aetna's own in-plan oncologist recommended that David receive the standard chemotherapy treatment at City of Hope -- in order to assure the continuity of David's care. And under California law, Aetna was required to do just that. But Aetna ignored its own doctor's recommendation and ignored its duty to assure that David had continuity of care and, instead, refused to authorize or pay for that treatment.

Since City of Hope -- charitably -- provided the treatment to David and did not charge David for the treatment, Aetna insisted that the cost of that treatment not be included as any part of the damages in the lawsuit. Thus, the City of Hope could be reimbursed for the services it provided to David and its good deed was punished by Aetna -- and Aetna escaped payment for treatment it actually owed under its contract.

#### Aetna's False and Misleading Statement:

On August 5, 1993, Mr. Goodrich consulted with his primary care physician, Dr. Wang, regarding an experimental procedure called cryosurgery. Dr. Wang referred Mr. Goodrich to an in-plan oncologist, Dr. Jack Schwartz, who recommended approval for the procedure at an out-of-network facility, St. John's Hospital, with Dr. Leland Foshag. A request for approval also was sent to Mr. Goodrich's other insurance company,

which indicated it would pay for the procedure. Mr. Goodrich underwent the cryosurgery at St. John's on Sept. 21, 1993. Aetna again had this request for experimental treatment reviewed by independent medical experts selected by Grace Powers Monaco. This time, one specialist thought the cryosurgery might help Mr. Goodrich, so Aetna approved the treatment and paid for it.

The Truth:

Cryoablation was not an experimental treatment, even in 1993.

The request for the cryoablation had to go through the same nightmarish approval process set out above and took months to do so.

Mr. Goodrich's other insurance company was a self-funded benefit plan operated by his wife's employer -- the Yucaipa-Calimesa Unified School District, under which he was covered as his wife's dependent. But Aetna was the primary insurer and whether the school district would be willing to cover the procedure was totally irrelevant to Aetna's duty to provide coverage to David in the first instance.

Primecare, on behalf of Aetna, actually denied the treatment request for the cryoablation after David had already had the surgery.

Aetna finally paid some, but not all, of the bills from the cryoablation six months after the surgery.

Aetna never paid for the original consultation with Dr. Foshag.

Aetna's False and Misleading Statement:

In October 1993, Mr. Goodrich again began receiving conventional chemotherapy treatment without authorization at an out-of-network facility, this time at St. John's. Mr. Goodrich was notified by Aetna that self-referred, out-of-network treatment that was available in-plan could not be covered. He was offered a nurse case manager whose job would have been to assist him in coordinating his care with the appropriate providers to get the maximum coverage available under his health plan, but he did not respond.

The Truth:

Aetna's primary defense at trial -- and its argument to the jury centered on -- Aetna's claim that it should not be liable for either the bills or David's premature death because they resulted from David's own failure to follow Aetna's rules. Aetna even insisted that the jury be instructed that it could allocate some or all of the fault to David. On the verdict form, after hearing all the evidence about what Aetna contended that David did and did not do and after hearing all of Aetna's arguments about the problems being David's fault, the jury allocated 0% of the fault to David and 100% of the fault to Aetna.

Much of the chemotherapy treatment received by David after the cryoablation was not standard chemotherapy. In fact, there were only two places in California that were equipped to provide some of the chemotherapy treatments -- USC and UCLA. Since David could not obtain that treatment from in-plan facilities, Aetna was required under California law to pay for it at out-of-plan facilities.

Requiring David to receive even the standard chemotherapy or to obtain even the lab tests or x-rays through in-plan facilities despite the fact that the treatment was being coordinated by Dr. Foshag and the medical oncologist working with him, Dr. Chawla, constituted a breach of Aetna's obligation to assure that David had continuity of care as required under California law.

Even when David tried to comply with Aetna's demands, Aetna rejected his treatment requests. Many, many times David asked his PCP to submit an authorization request to Primecare and Aetna for approval of a CT scan, blood test or chemotherapy treatment that Dr. Foshag or Dr. Chawla needed to have done and requested that those services be provided at in-plan facilities. The PCP signed those authorization requests and submitted them to Aetna. Aetna routinely denied those requests -- purportedly because they had been requested at the behest of the out-of-plan doctors, even though the requests were signed by the plan doctor assigned to David. At one point, Teresa asked David's PCP why Aetna was denying even the requests for treatment to be provided in-plan and the doctor's only response was HMOs are fine as long as you don't get sick.

David did utilize the services of a nurse case manager. Sharon Hopkins, R.N., Primecare's utilization review nurse assigned to David's case, actually spoke with David for hours during this time period. She looked forward to David's calls because he was such a nice man and was so interesting and so easy to talk to. Even though she had to keep denying his claims, she liked talking to him because he never made their relationship seem adversarial. He explained to her that he simply had to do whatever was necessary to try to stay alive as long as possible. Ms. Hopkins even visited David when he was in the hospital.

#### Aetna's False and Misleading Statement:

This pattern continued throughout 1994, as Mr. Goodrich received out-of-network, unauthorized conventional treatment at St. John's, and he ignored repeated warnings that out-of-network treatment could not be covered. Mr. Goodrich's out-of-network treatment was covered by his wife's health insurance -- a fact that was withheld from the jury by a court ruling. Suggestions that he died without knowing these bills would be taken care of are not true. At no time did he take any action to question, protest or appeal any coverage denials by Aetna.

#### The Truth:

Since David did, in fact, request that the CT scans, x-rays, blood tests and chemotherapy treatments that could be done in-plan be approved, and since Aetna routinely denied those requests, what else was David supposed to do?

The trial judge ruled that Aetna could not introduce evidence of the existence of coverage, if any, under the school district's plan because, as the judge put it, whether anyone else agreed to pay the bills was irrelevant to Aetna's responsibility to pay the bills. It is revolting and repugnant that Aetna would try to defend its own wrongful conduct by trying to foist its legal obligations off onto a small school district.

Aetna delivered its final denial letter to David when he was in intensive care the day after a final surgery in January, 1995. At that point, David did not know whether the school district would pay the bills. He died, still in the hospital, on March 15, 1995 -- knowing that there were more than a half million dollars in bills still outstanding and that neither Aetna nor the school district would agree to pay them.

Although the school district eventually paid the bills -- over a year after David died -- the payment of the bills depleted the school district's benefit fund so much that the school district's teachers were not able to receive their full raises the following year -- evidence that the jury would have heard if Aetna had been allowed to tell the jury that the school district had paid the bills.

The school district has a lien on any recovery Teresa obtains from Aetna and will be paid back out of the judgment for all the bills it paid -- even before Teresa gets any money from the judgment.

About the assertion that David never appealed Aetna's denials:

The hospital itself repeatedly initiated appeals in response to Aetna's denials. All the appeals were rejected and the denials reaffirmed.

The school district even appealed Aetna's denials of the bills. Aetna also rejected that appeal and reaffirmed the denials.

After David's death, Teresa, through the PCP, also initiated an appeal. That appeal, too, was rejected and the denials reaffirmed.

Aetna demanded that Teresa mediate her claims against Aetna immediately after she filed her complaint in this action. She did so. Aetna never tendered any payment for the bills at issue in the lawsuit.

Aetna litigated the lawsuit for three years and never once offered to pay any of the bills. So, what difference would an appeal by David before he died have made?

Aetna's False and Misleading Statement:

In January 1995, Mr. Goodrich entered St. John's for surgery that had been precertified and approved by his other insurance company. This was conventional surgery that could have been conducted in-plan, so coverage by Aetna was denied. Mr. Goodrich remained hospitalized until his death on March 15, 1995.

The Truth:

Requiring the surgery to be conducted in-plan would have violated Aetna's obligation under California law to assure the continuity of David's medical care.

The surgery was not precertified and approved by the school district plan. In fact, the hospital did not call the right administrator and the school district's administrator later refused to cover the bills because of that mistake.

Aetna had no right to rely on the school district's coverage since Aetna was the primary carrier.

Aetna did not deny coverage for the surgery until after it was completed, in violation of the time standards Aetna was supposed to follow.

Aetna's False and Misleading Statement:

All of Mr. Goodrich's medical bills were covered by Aetna -- when treatment was provided in-plan or authorized in accordance with plan requirements -- or by Mr. Goodrich's wife's health insurance, although the jury was not permitted to hear about the secondary coverage. During the course of his treatment, the total out-of-pocket cost to the Goodriches was less than \$2,000.

The Truth:

The abject falsity of this statement is evidenced by the facts, set forth above, demonstrating that even when David requested, through his in-plan PCP, that he be provided with in-plan treatment at in-plan facilities, the requests were denied by Aetna.

Aetna had no right to foist its contractual obligations off onto the school district, or to force the school district's teachers to forego their raises in order to provide Aetna with an even greater cost savings and profit margin.

Teresa Goodrich -- a kindergarten teacher -- was faced with over \$500,000 in bills for over a year after David died because both Aetna and the school district refused to pay the bills.

Aetna's False and Misleading Statement:

At no time did Mr. Goodrich fail to receive any treatment recommended by in-plan or out-of-plan doctors, and all treatment was obtained without delay due to the timing of coverage approvals or denials

The Truth:

As testified to by Dr. Foshag, Aetna should have discovered and provided David with the cryoablation at least six months earlier and, if it had, David would have lived 15-20 months longer.