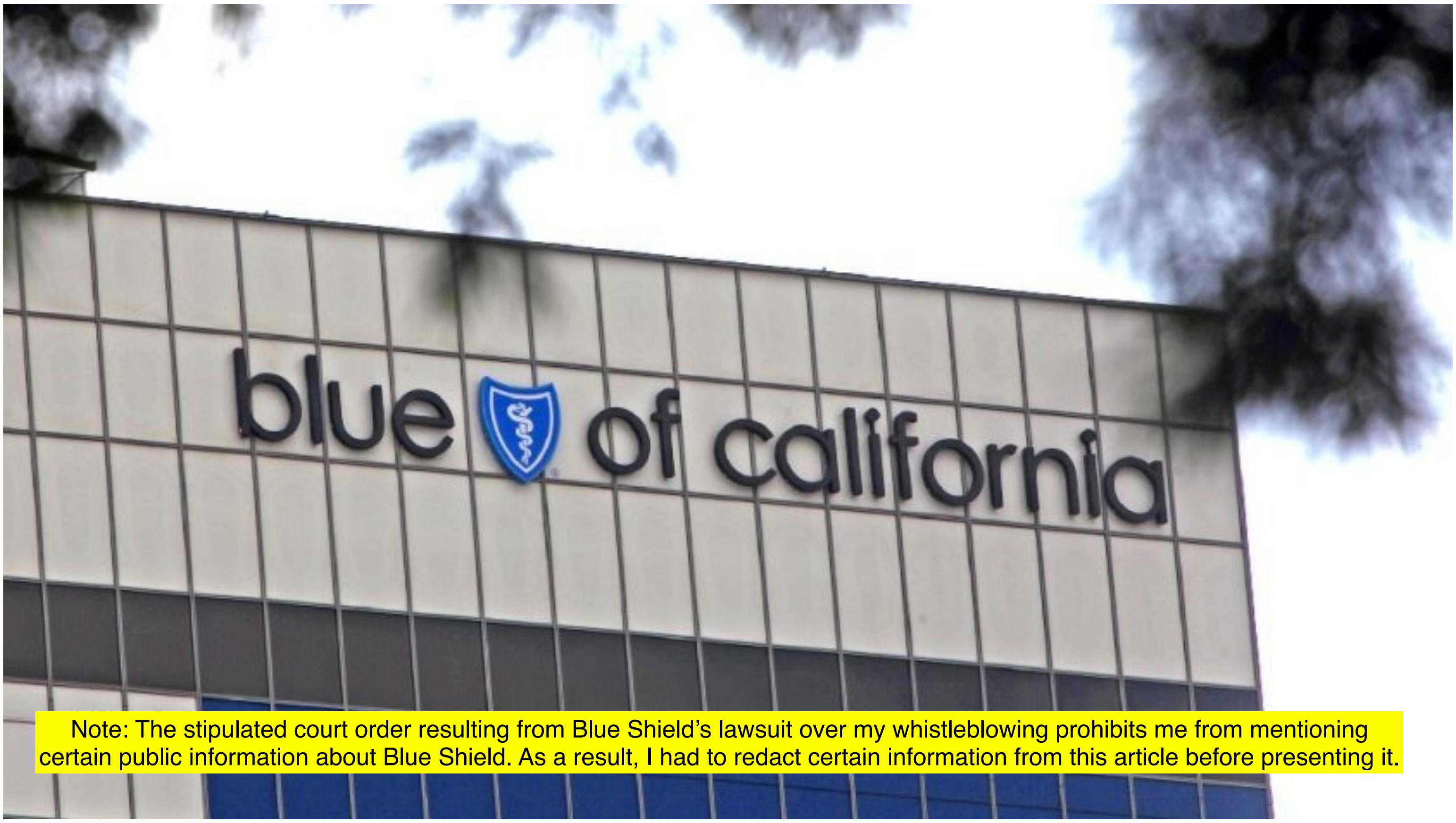
Blue Shield's deal with regulators on $1.2-billion acquisition draws fire



Blue Shield of California is the state's third-largest health insurer with about 3.3 million members and more than $13 billion in annual revenue. (Bob Chamberlin / Los Angeles Times)

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WRITER

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Beleaguered insurer Blue Shield of California won state approval for its $1.2-billion acquisition of a Medicaid health plan, but the nonprofit company's deal with regulators drew heavy criticism.

The California Department of Managed Health Care said it extracted several key concessions from Blue Shield in an agreement unveiled Thursday.

Ending a high-stakes and lengthy battle, the company agreed to permanently relinquish its longtime state tax exemption.

The San Francisco insurer also pledged to spend $200 million over the next decade on several initiatives aimed at providing better patient care. And Blue Shield agreed to improve its poor health plan ratings over time and fix inaccuracies in its provider directories.

Most important for Blue Shield, the state sided with the company’s argument that its assets, including about $4.2 billion in financial reserves, aren’t subject to charitable trust obligations and it doesn’t operate as a public charity.

Consumer groups had insisted otherwise, saying the nonprofit insurer had long touted its public mission and had benefited from a state tax break since its founding in 1939.

If regulators had determined Blue Shield was holding some public assets, they could have restricted how the company spends money for an acquisition or other uses.

Patient advocates said regulators made the wrong call and then compounded it by failing to impose tougher conditions on Blue Shield, such as limiting its ability to impose rate increases deemed unreasonable. State officials have no power to stop those now.

“We are disappointed in the state’s ruling on the charitable trust issue and for not putting other conditions in place,” said Anthony Wright, executive director of Health Access, a consumer advocacy group. “The specifics in the agreement are underwhelming.”

Jamie Court, president of Consumer Watchdog in Santa Monica, agreed that regulators erred and said the courts or the state attorney general may need to weigh in on Blue Shield’s obligations to the public.

“Blue Shield shouldn’t be drawing on a bank account entrusted to the public and policyholders for an acquisition spree when there are still significant questions on how that money should be spent,” Court said. Regulators were “holding a very strong hand, and they folded.”

Shelley Rouillard, director of the Department of Managed Health Care, defended the agreement as one that will benefit consumers statewide.

“I think we got some strong commitments from Blue Shield to do better, and we will be monitoring them and holding them accountable,” Rouillard said.

Rouillard said her agency conducted an exhaustive review and performed complex legal analyses to determine the company’s obligations as a nonprofit insurer.

Blue Shield announced the proposed purchase of Monterey Park-based Care1st Health Plan in December.

The state's scrutiny of the deal intensified after The Times reported in March that the Franchise Tax Board had revoked Blue Shield's exemption from state income taxes in August 2014.

Neither Blue Shield nor the tax board had disclosed the revocation. The insurer has been appealing the tax ruling.

That decision will now be moot, according to Blue Shield, but the company continues to challenge the state's order to pay about $150 million in back taxes and interest for 2009 to 2012.

Blue Shield said it intends to remain a nonprofit, regardless of its tax status.

The insurer pays federal income taxes and has estimated it will pay about $30 million annually into the state's coffers without its exemption. The company is the state's third-largest health insurer, with about 3.3 million customers and $13.6 billion in revenue last year.

"We are very pleased that after a long and in-depth review by the state, we have received their approval," said company spokesman Steve Shivinsky. "Blue Shield is excited to finally be in position to enter the Medi-Cal market through Care1st."

Care1st serves about 500,000 patients, most of them Medi-Cal members in Los Angeles and San Diego counties.

The bulk of the $200 million Blue Shield has agreed to spend will be going to its own charitable foundation.

State officials said the insurer will contribute $14 million annually for 10 years to Blue Shield's foundation or another charity that focuses on helping the uninsured. The company normally contributes about $30 million annually to its foundation for a variety of causes.

Blue Shield will put an additional $50 million into two new healthcare databases, including the creation of a statewide provider directory open to all health plans. It could be two years before those centralized data are available to consumers, officials said.

Rouillard said the state's review of the deal was complicated by Blue Shield's conflicting statements about its corporate structure.

"Through this process there have been inconsistencies in what Blue Shield has said," Rouillard said. "It was frustrating because we had to spend a lot of time and energy to make sure what was true."

During a state hearing on the transaction in June, Blue Shield Chief Executive Paul

Markovich emphasized that the company is set up as a nonprofit mutual benefit corporation that serves its policyholders and cannot have any charitable or public obligation.

Markovich told regulators that Blue Shield's assets would be distributed to the company's enrollees if the company were ever to dissolve.

Asked about the contradiction, the company stood behind Markovich's comments.

To address the state's concern, Blue Shield said in Thursday's agreement that it will "refrain from making any statements to the department that are … misleading or inconsistent."

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