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OFFICE OF  
INSURANCE COMMISSIONER  
HEARINGS UNIT

Fax: (360) 664-2782

2013 APR -1 P 1:00

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Presiding Officer  
Kelly A. Cairns  
Paralegal  
(360) 725-7002  
[KellyC@oic.wa.gov](mailto:KellyC@oic.wa.gov)

Patricia D. Petersen  
Chief Presiding Officer  
(360) 725-7105

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	No. 09-0010
	)	
PACIFICARE OF WASHINGTON, INC.,	)	FINAL ORDER TERMINATING
	)	PROCEEDINGS
Authorized Health Care Service Contractor.	)	

**TO:** Jeffrey Gingold, Esq.  
Gingold Law Firm, PLLC  
400 Harborview Drive SE, Suite 237  
Bainbridge Island, WA 98110-2467

Barbara Duffy, Esq.  
Lane Powell, PC  
1420 Fifth Avenue, Suite 1400  
Seattle, WA 98101-2338

**COPY TO:** Mike Kreidler, Insurance Commissioner  
Deborah McCurley, Acting Chief Deputy Insurance Commissioner  
Charles Brown, Acting Deputy Commissioner, Legal Affairs Division  
Andrea Philhower, Staff Attorney, Legal Affairs Division  
James T. Odiorne, Deputy Commissioner, Company Supervision Division  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

On August 14, 2009, the Insurance Commissioner ("OIC") filed with the undersigned a Notice of Request for Hearing for Imposition of Fines, No. 09-0010, seeking the imposition of fines against Pacificare of Washington, Inc., an authorized

ORDER TERMINATING PROCEEDINGS

No. 09-0010

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health care service contractor ("Pacificare"), for alleged violations of RCW 48.31C.050. Specifically, the OIC alleged that Pacificare illegally paid royalties to its parent company, falsely classified them within its annual financial reports, and repeatedly denied to the OIC that such payments were being made, amounting to approximately 96 violations occurring over a span of 8 years.

In response to OIC's Notice of Request for Hearing, Pacificare, by and through its attorney Jeffrey L. Gingold, Esq., of Lane Powell PC, Seattle, Washington, by letter dated August 17, 2009, requested that the hearing in this matter be presided over by an administrative law judge assigned under chapter 34.12 RCW. Therefore, on August 31, 2009, the undersigned referred the matter and transmitted all related documents received to the Office of Administrative Hearings ("OAH") requesting that a hearing be held and an initial order entered. This matter was presided over by an OAH judge from that time until November 16, 2012, except for the undersigned's review of the OAH judge's Initial Order Denying Motion for Summary Judgment, which was upheld by the undersigned in her Final Order Denying Motion for Summary Judgment entered January 18, 2010.

On November 9, 2012, the OIC filed with the OAH a copy of the Consent Order Levying a Fine, No. 09-0010 which was executed by Pacificare on October 26, 2012, and by Andrea L. Philhower, OIC Staff Attorney, on October 30, 2012. Among the terms of the Consent Order, Pacificare agreed to pay a \$400,000 fine and to waive any and all hearing rights it may have and further administrative or judicial challenges. A copy of the Consent Order is attached hereto and by this reference incorporated herein. On November 15, 2012, the OAH judge filed a Notice of Case Closure in this matter, and on December 26, 2012, the complete case file was returned to the undersigned.

It is noted that, relative to the Consent Order filed on November 9, 2012 in settlement of this matter, this was settled prior to any adjudicative proceeding. Therefore, for purposes of clarification, while this Consent Order includes statements identified as "Findings of Fact" and "Conclusions of Law," these are not Findings of Fact or Conclusions of Law which were made by an adjudicator after an adjudicative proceeding; rather, the statements contained in the attached Consent Order which are entitled "Findings of Fact" and "Conclusions of Law" are only statements which were agreed upon by the parties between themselves without involvement of any adjudicator or finder of fact.

**ORDER**

Based upon the above activity,

**IT IS HEREBY ORDERED** that this case has been settled prior to a hearing. Therefore, for purposes of clarification, while the Consent Order Levying a Fine, executed by Pacificare and the OIC on October 26, 2012 and October 30, 2012, respectively, includes statements identified as "Findings of Fact" and "Conclusions of Law," these statements are not Findings of Fact or Conclusions of Law which were made

ORDER TERMINATING PROCEEDINGS

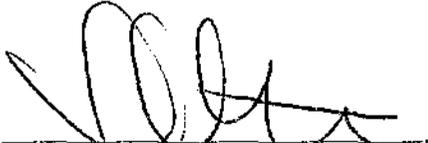
No. 09-0010

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by an adjudicator after an adjudicative proceeding; rather, the statements contained in the attached Consent Order entitled "Findings of Fact" and "Conclusions of Law" are only statements which were agreed upon by the parties between themselves without involvement of any adjudicator or finder of fact.

**IT IS FURTHER ORDERED** that, by agreement of the parties, this proceeding, Docket No. 09-0010, is hereby dismissed with prejudice.

Entered this 1<sup>st</sup> day of April, 2013, at Tumwater, Washington, pursuant to Title 48 RCW, Title 34 RCW and regulations pursuant thereto.



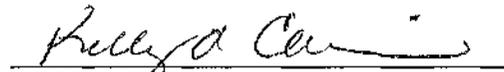
PATRICIA D. PETERSEN, J.D.

Chief Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Jeffrey Gingold, Esq., Barbara Duffy, Esq., Mike Kreidler, Deborah McCurley, John F. Hamje, Charles Brown, Esq. and Andrea Philhower, Esq.

DATED this 2<sup>nd</sup> day of April, 2013.

  
KELLY A. CARNES



OFFICE OF  
INSURANCE COMMISSIONER

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IN THE MATTER OF

PACIFICARE OF WASHINGTON, Inc.,

Authorized Health Care Service Contractor.

000513671 11/06/12 400,000.00 ✓

OAH DOCKET NO. 2009-INS-0001  
ORDER NO. 09-0010

CONSENT ORDER LEVYING A FINE

The Insurance Commissioner of the State of Washington, pursuant to the authority set forth in RCW 48.44.160(1) and RCW 48.44.166, and having reviewed the official records and files of the Office of the Insurance Commissioner ("OIC"), makes the following:

**FINDINGS OF FACT:**

1. PacifiCare of Washington, Inc. ("PacifiCare of Washington" or "the Company") is a health care service contractor authorized to do business in the state of Washington.
2. In or about November 1998, PacifiCare of Washington provided OIC a copy of the draft Master License Agreement whereby it would make royalty fee payments to an affiliate company, PacifiCare Life and Health Insurance Company ("PLHIC"). OIC and PacifiCare of Washington discussed the draft Master License Agreement regarding accounting and reporting issues. PacifiCare of Washington's Chief Financial Officer informed OIC that PacifiCare of Washington would not implement royalty payments. Around that same time, PacifiCare of Washington discussed with OIC a proposed management agreement in which PacifiCare of Washington would pay to its parent company, PacifiCare Health Plan Administrators ("PHPA"), an administrative fee. OIC indicated that any management agreement would need an annual true-up of actual costs incurred by PHPA on behalf of PacifiCare of Washington. If, after the costs were considered, the administrative fee paid to PHPA was greater than the actual costs, PHPA would refund the difference. Conversely, if the administrative fee was less than actual costs, PacifiCare of Washington would pay PHPA the difference.
3. Over the intervening years, OIC has questioned certain costs included in the accounting records of payments under the Management Agreement. In particular, OIC questioned whether some of the payments were actually royalty payments.

CONSENT ORDER

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Mailing Address: P. O. Box 40255 • Olympia, WA 98504-0255

Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501



4. During a financial examination for the period of January 1, 2003 through December 31, 2006, OIC learned that the annual true-ups required under the Management Agreement had not been performed. When the Company calculated the true-ups for each of the years of the examination period, it included as costs certain "management contract fees." When OIC asked about those fees, the Company provided inconsistent explanations concerning whether "royalties" had been included in the fees subject to annual true-ups.

5. Finally, PacifiCare of Washington acknowledged in a written response to the draft report of the 2003-2006 exam that it had paid royalties during that exam period.

6. During the 2003-2006 exam, PacifiCare of Washington calculated the total amount of these questioned payments as \$72,914,631 for the exam period and for prior years dating back to 1999. At OIC's request, the Company provided satisfactory documentation to OIC that the Company recouped this amount from PHPA.

7. However, despite making contrary written statements, when OIC asked for additional information during the course of discovery in the OIC's resulting enforcement action, PacifiCare of Washington contended it did not make royalty payments.

#### **CONCLUSIONS OF LAW:**

1. By failing to undertake the annual true-ups required by the OIC and the Management Agreement during the period of 2003 to 2006 and failing to submit reports substantiating the fact that true-ups took place and failing to submit reports of the results of the true-ups as required by OIC, PacifiCare of Washington violated RCW 48.30.120(6).

#### **CONSENT TO ORDER:**

PacifiCare of Washington, acknowledging its duty to comply fully with the applicable laws of the State of Washington, consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle the matter in consideration of the Company's payment of a fine and such terms and conditions as are set forth below.

1. PacifiCare of Washington consents to the entry of this Order, waives any and all hearing rights, and further administrative or judicial challenges to this Consent Order.

2. By agreement of the parties, the Insurance Commissioner will impose a fine of \$400,000 on the conditions that:

a. Within thirty days of the entry of this Order, PacifiCare of Washington pays \$400,000.

**CONSENT ORDER**

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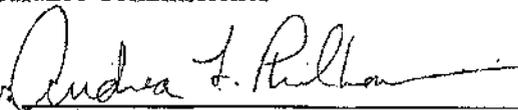
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2. The Company's failure to pay the fine within the time limit set forth above shall result in the revocation of the Company's Certificate of Authority and in the recovery of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 30<sup>th</sup> day of October, 2012.

MIKE KREIDLER  
Insurance Commissioner

By: 

Andrea L. Philhower  
OIC Staff Attorney  
Legal Affairs Division

CONSENT ORDER

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