



OFFICE OF  
INSURANCE COMMISSIONER

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BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:	)	
	)	No. 09-0091
ADVANTAGE DENTAL PLAN,	)	
INCORPORATED	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
A registered health service contractor.	)	AND ORDER ON HEARING
_____	)	

**TO:** Ralph Michael Shirtcliff, DMD, President and Chief Executive Officer  
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Pursuant to RCW 34.05.434, RCW 34.05.461, RCW 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington on April 12, 2010, in Tumwater, Washington. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through his Staff Attorney Charles D. Brown, Esq. Michelle Blackwell, Esq. of Watkinson, Laird, Rubenstein, Baldwin & Burgess, P.C. of Eugene, Oregon appeared on behalf of Advantage Dental Plan, Inc.

**NATURE OF PROCEEDING**

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's proposed Notice of Intent to Revoke Certificate of Registration No. 173, should be confirmed, set aside or modified. Said Notice revokes the Certificate of Registration of Advantage Dental Plan, Inc., based upon Consent Order No. 09-0091, dated December 9, 2009, which imposed a fine of \$1,750 on Advantage Dental Plan, Inc, alleging that Advantage Dental Plan, Inc. failed to timely file its December 31, 2008 Additional Data Statement, Form IC-13A-HC, as required and that it remains outstanding. Advantage Dental Plan, Inc. requested this hearing to contest the Insurance Commissioner's proposed Notice of Intent to Revoke Certificate of Registration.

**FINDINGS OF FACTS**

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Chapter 48 RCW, and specifically RCW 48.04 and Chapter 34 RCW including, for good cause shown, RCW 34.05.461(8).

2. Advantage Dental Plan, Incorporated ("Advantage"), is an Oregon domiciled health care service contractor. Since 2003, it has held a Certificate of Registration, No. 173, issued by the Washington State Insurance Commissioner ("OIC") to transact prepaid health care in the state of Washington. Advantage was organized in 1994 by approximately 30 dentists, one of which was Dr. Ralph Michael Shirtcliff, Doctor of Medical Dentistry and Chief Executive Officer of Advantage and, at least during part of the pertinent period and also currently, its President. Advantage, which was formed to create access to care, and works with the Oregon Health Plan and MediCare, now has approximately 300 dentists, conducts business in Washington, Oregon and Idaho, and

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accepts small groups down to two individuals in Washington. Its premium in Washington was approximately \$134,000 in 2008, \$12-13 million in Oregon and \$500,000 in Idaho. Advantage employs approximately 60 staff members in Redmond, Oregon, one in Idaho and none in Washington. Advantage contracts with approximately 50-80 dentists in Washington. [Testimony of Ralph Michael Shirtcliff, DMD.]

3. In 2003, the Washington State Insurance Commissioner began requiring that Form IC-13A-HC (Additional Data Statement) be filed by each health care service contractor registered to conduct business in Washington, along with the annual filing due by March 1 to cover business conducted by that health care service contractor during the prior calendar year. The OIC provided telephone and technical assistance for two years following the inception of this requirement and instructions are available on the OIC website [Testimony of OIC Senior Financial Analyst Chase H. Davis.]

4. It is uncontested that Advantage has been late in filing its annual financial data for each of the calendar years (except 2005) since it received its registration to conduct business in Washington in 2003. For these late filings, Advantage has been subject to three prior Consent Orders from the OIC. Specifically, 1) Advantage filed its 2003 data (due by March 1, 2004) late, but was not fined because of a grace period to allow all companies an opportunity to become familiar with electronic filing [Ex. 3]; 2) Advantage filed its 2004 data late and was fined \$1,000 by the OIC, through Amended Consent Order No. D2005-122 executed by Mike Shirtcliff, DMD, its President [Ex. 4]; 3) Advantage filed its 2005 data timely [Ex. 3]; 4) Advantage filed its 2006 data late but was not fined because it was within the OIC's one-day grace period; 5) Advantage filed its 2007 data late and was fined \$875 by the OIC, through Consent Order executed by Fonda Looney, its Accounting Manager [Ex. 5]; 6) Advantage filed its 2008 data late and was fined \$1750 by the OIC, through Consent Order, No. D09-0091, executed by Advantage [Testimony of Davis; Ex. 6.]

5. As with each prior Consent Order [Exs. 4, 5], in its most recent Consent Order for failure to timely file its 2008 Additional Data Form IC-13A-HC [Consent Order D 09-0091 executed by Advantage November 30, 2009], Advantage paid the \$1,750 fine imposed by the OIC [Ex. 6] and agreed to comply with the laws governing these filings in the future. Further, in this most recent Consent Order, Advantage agreed to file its Additional Data Form (Form IC-13A-HC) by January 8, 2010, which was thirty days from the entry of that Consent Order. Additionally, by December 10, 2009 letter [Ex. 6], the OIC reminded Advantage that it must file its Form IC-13A-HC by January 8, 2010, and advised Advantage to contact the OIC by telephone if it had any further questions or concerns. Subsequently, when the OIC had not received said Additional Data Statement from Advantage, the OIC by letter of January 12, 2010 [Ex. 1] advised Advantage that on January 22 the OIC would enter an Order Revoking Certificate of Registration against Advantage. In response, on January 21, Advantage filed its Request for Hearing herein and

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therefore said proposed revocation was automatically stayed and there has been no Order Revoking Certificate of Registration against Advantage. [Testimony of Davis; Ex. 1.]

6. The OIC is under direction not to take calls from companies requesting confirmation of receipt of their financial filings such as those involved in this matter, nor does the OIC take calls from companies requesting technical assistance with electronic filings. [Testimony of Davis.] However, atypically, OIC Senior Financial Analyst Chase H. Davis, who is charged in part with handling filings of financial statements of the type at issue herein, did telephone Advantage because Advantage had a history of late filings. [Testimony of Davis.] Additionally, while Advantage maintains it tried to file said Form IC-13A-HC on January 8, 2010, the OIC has no information that they tried. [Testimony of Davis.] Additionally, while other companies have filed these financial forms late, none other has filed so many late as has Advantage. [Testimony of Davis.] It is of some significance, however, that even though the subject filing deadline was pursuant to the January 8, 2010 deadline contained in the Consent Order and not pursuant to the statutory deadline for filing annual statements and accompanying Forms IC-13A-HC, there is no evidence that Advantage requested permission to file its Form IC-13A-HC for calendar year 2008 in paper copy as opposed to electronically as provided for in WAC 284-07-050(4). There is also no evidence that Advantage requested the OIC to allow it a reasonable extension of the time for filing this financial statement as provided for in WAC 284-07-050(9) and 284-07-070(6).

7. Because, just as is the procedure with the National Association of Insurance Commissioners, the OIC does not allow electronic filings of Forms IC-13A-HC which are over one year late, Advantage has been prohibited from filing its 2008 Form IC-13A-HC electronically, but has filed this Form with the OIC in paper copy. [Ex. 10.] Said form is required to be filed electronically. [Testimony of Davis.]

8. Since it was admitted by the Washington Insurance Commissioner to conduct business in Washington in 2003, Advantage failed to timely file its Forms IC-13A-HC for calendar years 2003, 2004, 2006, 2007 and 2008, was given leniency for 2003 and 2006 and entered into Consent Orders admitting said violations and agreeing to the payment of fines for the years 2004, 2007 and 2008. Therefore, for five of the first six years of business in Washington, Advantage violated the OIC's requirement of filing said Forms IC-13A-HC. Further, Advantage was clearly aware that it had committed said violations for at least three of those years, as evidenced by its entry into the above-referenced Consent Orders and payment of fines. Additionally, Advantage's filing of its Form IC-13A-HC for calendar year 2009, due by March 1, 2010, was also filed late. [Testimony of Davis.]

9. Chase H. Davis, Senior Financial Analyst with the Office of the Insurance Commissioner, appeared and testified as a witness on behalf of the Commissioner. Mr.

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Davis presented his testimony in a clear, detailed and credible manner and exhibited no apparent biases.

10. Ralph Michael Shirtcliff, DMD, who is President and Chief Executive Officer of Advantage and who was one of the founders of Advantage in 1994, appeared and testified as a witness on behalf of Advantage. Mr. Shirtcliff presented his testimony in a clear, detailed and credible manner and exhibited no apparent biases.

11. Based upon the facts found above, it is reasonable to impose a fine of \$10,000 in lieu of revocation, with the advice that should Advantage violate the statutes at issue herein again in the future, these facts shall be considered in the imposition of further fines, revocation of Advantage's registration as a health care service contractor in Washington and/or other penalties.

**CONCLUSIONS OF LAW**

1. RCW 48.44.095 provides "*(1) Every health care service contractor shall annually, before the first day of March, file with the commissioner a statement...showing its financial condition as of the last day of the preceding calendar year.... The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed....*"

2. WAC 284-07-050(8) requires that "*(8) Each health care service contractor's... annual statement be accompanied by an additional data statement form (IC-13A-HC...).*"

3. RCW 48.44.160 provides that "*The Insurance Commissioner may, subject to a hearing if one is demanded..., revoke, ...registration from any health care service contractor, or he may issue a cease and desist order, ...if such health care service contractor: (1) Fails to comply with any provision of chapter 48.44 RCW or any proper order or regulation of the commissioner.*"

4. Based upon the facts found above, on three occasions Advantage entered into Settlement Agreements (Consent Orders) for its admitted violations of WAC 284-07-050(8). Of significance, based upon its violation of WAC 284-07-050(8) in failing to file its Form IC-13A-HC for calendar year 2008 by May 1, 2009, Advantage entered into a Consent Order, No. D09-0091 with the OIC, agreeing to file its 2008 Form IC-13A-HC by January 8, 2010. Advantage failed to do so, which failure constituted a failure to comply with a regulation of the commissioner, WAC 284-07-050(8), as well as a failure to comply with a proper order of the commissioner, said Consent Order, each as contemplated by RCW 48.44.160(1).

5. RCW 48.44.166 provides that "*After hearing...and in addition to or in lieu of the*

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*...revocation...of a health care service contractor the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, ...and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general."*

6. Based upon the above Finding of Facts and Conclusions of Law, it is reasonable to conclude that Advantage should, in lieu of revocation of its registration which is specifically authorized by RCW 48.44.166 and which the Commissioner seeks in this proceeding, be fined the amount of \$10,000 for its violation of WAC 284-07-050(8) and, more particularly, Consent Order No. D09-0091 entered into between Advantage and the OIC on December 9, 2009.

7. Based upon the above Findings of Facts, and given the circumstances found above, Advantage may file its Form IC-13A-HC for calendar year 2008 electronically unless it is an undue burden on the OIC to allow said electronic filing. If said electronic filing is an undue burden on the OIC, however, then the OIC is not required to allow said electronic filing if 1) the OIC agrees, in writing, to accept Advantage's paper filing in lieu of electronic filing for the 2008 calendar year; and 2) there would be no significant adverse affect on Advantage to have only filed by paper copy for calendar year 2008.

**ORDER**

On the basis of the foregoing Findings of Facts and Conclusions of Law,

**IT IS HEREBY ORDERED** that, as authorized by RCW 48.44.166, Advantage Dental Plan, Inc. shall pay a fine of \$10,000 within 30 days of the date of this Order in lieu of revocation of its Washington Certificate of Registration No. 173 as a Health Care Service Contractor in Washington State. As further provided for in RCW 48.44.166, should Advantage Dental Plan, Inc. fail to pay this fine of \$10,000 within 30 days of the date of this Order, its Certificate of Registration as a Health Care Service Contractor in Washington State shall be automatically revoked.

**IT IS FURTHER ORDERED** that Advantage Dental Plan, Inc. may file its Form IC-13A-HC for calendar year 2008 electronically unless it is an undue burden on the OIC to allow said electronic filing. If said electronic filing is an undue burden on the OIC, however, then the OIC is not required to allow said electronic filing if 1) the OIC agrees, in writing, to accept Advantage Dental Plan Inc.'s paper filing in lieu of electronic filing for calendar year 2008; and 2) there would be no significant adverse affect on Advantage Dental Plan, Inc. to have only filed by paper copy for calendar year 2008.

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**IT IS FURTHER ORDERED** that should Advantage Dental Plan, Inc. fail to timely file its Forms IC-13A-HC in the future, the violations found herein which occurred for calendar years 2003, 2004, 2006, 2007 and 2008 shall be considered by the OIC in its imposition of penalties for any such future violations.

This Order is entered pursuant to RCW 34.05; WAC 10-08-210; Title 48 RCW and particularly RCW 48.44.160 and .166; Chapter 284 WAC and particularly WAC 284-07-050 and -070.

This Order is entered at Tumwater, Washington, this 13<sup>th</sup> day of August, 2010.

  
PATRICIA D. PETERSEN  
PRESIDING OFFICER

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General in the United States mail. If a party chooses to file a petition in the Superior Court, he or she may, but is not required to, first file a request for reconsideration. For further information or to obtain copies of the applicable statutes, the parties may contact the administrative assistant to the undersigned.

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: Ralph Michael Shirtcliff, Michelle Blackwell, Esq., Mike Kreidler, Michael G. Watson, Carol Sureau, Esq., Charles D. Brown, Sr., Esq., and James T. Odiorne, CPA, JD.

DATED this 13<sup>th</sup> day of August, 2010.

  
NICOLE KELLY