

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

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OFFICE OF
INSURANCE COMMISSIONER

2013 SEP 16 P 3:35

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0134
)	
PREFERRED CHIROPRACTIC)	ORDER DENYING PCD's MOTION
DOCTOR, INC.,)	FOR SUMMARY JUDGMENT
)	
Respondent.)	
_____)	

TO: Stephen L. Below, D.C., CEO/President
Preferred Chiropractic Doctor, Inc.
507 2nd Avenue South
Clanton, AL 35045

Edward I. Clabaugh, Esq.
Counsel for Respondent
10217 SW Burton Drive, Suite 100
Vashon Island, WA 98070

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Marcia Stickler, Staff Attorney, Legal Affairs Division
Charles Brown, Acting Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

NATURE OF PROCEEDING

On May 17, 2013, the Washington State Insurance Commissioner (OIC) issued a Notice of Request for Hearing for Imposition of Fines to Preferred Chiropractic Doctor, Inc.



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("Respondent"). Said Notice of Request for Hearing proposes that the OIC take disciplinary action against the Respondent based upon the OIC's allegation that the Respondent acted as the agent/dealer for, represented, marketed and/or sold at least 1,524 health care discount plan cards to Washington residents without being licensed by the OIC to operate as a discount plan organization in the State of Washington, in violation of RCW 48.155.020(1). On September 12, 2013 Respondent filed its Motion for Summary Judgment herein.

MOTION FOR SUMMARY JUDGMENT

1. On May 17, 2013, the OIC entered a Notice of Request for Hearing pursuant to RCW 48.155.130(1)(b). Accordingly, on June 12, the undersigned held a first prehearing conference in this matter, which included all parties. During that first prehearing conference on June 12, Respondent requested the OIC's voluntary submission of a substantial amount of specific informal discovery including notes of telephone calls to and from the OIC, emails from attorneys and other OIC staff reviewing the identity of Respondent, notes from the OIC supervisor regarding this matter, information about other decisions regarding discount plans and a significant amount of other material. Counsel for the OIC advised that there were no notes from the OIC supervisor in this matter, and that to her knowledge there were no other OIC decisions concerning other discount plans as of yet, but that the OIC would send Respondent copies of all that the OIC has - the OIC's entire file - in this instant matter by July 16. Finally, during that June 12 first prehearing conference both parties agreed that the hearing in this matter should commence on September 19, 2013 at 10:00 Pacific Time, and on June 27 the undersigned entered a Notice of Hearing advising that pursuant to agreement of the parties the hearing was scheduled to commence on September 19 at 10:00 a.m. Pacific Time.

2. There is no argument that the OIC did not perform as promised (with apparently one exception cited by Respondent which was neither part of Respondent's request for continuance nor Respondent's Motion for Summary Judgment). On August 9, 2013 Respondents sent a set of proposed stipulations to the OIC, to which the OIC declined to agree. On August 16, Respondent filed a request for the undersigned to require the OIC to agree to some or all of Respondent's proposed stipulations; further, as to those stipulations to which the OIC would not agree, Respondent asked the undersigned to require the OIC to submit documents to show its bases for refusing to agree. In response, the undersigned held a second prehearing conference on August 22 which included all parties; on that date, after argument from the parties and the undersigned's determination that she had no authority to require the OIC to do as Respondent requested, the undersigned denied Respondent's request. Following that August 22 denial, on that same date Respondent advised it would file a Motion for Summary Judgment ("Motion") in this matter and asked that the hearing be continued to allow Respondent to file this Motion.

3. During second prehearing conference on August 22, 2013 the undersigned denied Respondent's August 22 request for a continuance, based on her determination that Respondent had failed to show good cause for such continuance. Specifically, 56(c), Washington Rules of Court, requires that a Motion for Summary Judgment and any supporting affidavits, memoranda

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of law or other documentation shall be filed not later than 28 calendar days before the hearing. Respondent could have filed its Motion at any time since May 17, thereby easily allowing well over 28 days before the hearing. If Respondent required other documents to support its Motion, in light of the fact that Respondent sought and received the informal discovery it requested from the OIC on or before July 16, Respondent still had sufficient time to file its Motion well over 28 days before the hearing. Instead, however, not until August 22 did Respondent even advise that it would file a Motion for Summary Judgment which even then did not provide for its Motion to be filed at least 28 days before the September 19 hearing. For these reasons, there was no good cause to grant Respondent's request for a continuance of the September 19 hearing, and the request was denied. Although at that time it could have objected under CR 56(c) to Respondent filing a Motion for Summary Judgment at all, on the grounds there were not 28 days prior to the September 19 hearing date, in order to accommodate Respondent the OIC instead agreed 1) that Respondent would file its Motion on or before September 4 (i.e. 14 days after August 22; and 2) that the OIC would file its Response within 14 days after Respondent filed its Motion.

4. In fact, Respondent filed its Motion on September 12 (i.e. eight days late); the OIC filed its Response on September 12 (i.e. timely). Even though Respondent failed to file its Motion by the date it promised to do so, there being no objection from the OIC, the undersigned has considered Respondent's Motion.

5. Under CR 56(c), summary judgment shall be granted if the record shows that there is no genuine issue as to any material fact and that Respondent is entitled to a judgment as a matter of law, with consideration being given in a light most favorable to the nonmoving party.

6. The undersigned has carefully reviewed Respondent's Motion for Summary Judgment filed September 12, 2013; the OIC's Response to PCD Motion for Summary Judgment filed September 1, 2013; together with the evidence presented as contemplated by CR 56(c), and determines that Respondent's Motion for Summary Judgment should be denied. The basis for denial is that Respondent has failed to show that there is no genuine issue as to any material fact and that Respondent it is entitled to a judgment as a matter of law.

7. Pursuant to the above, the full evidentiary hearing herein shall commence on September 19, 2013, as was properly scheduled in the undersigned's June 27, 2013 Notice of Hearing.

Based upon the above activity,

IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is **DENIED**.

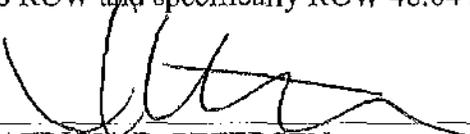
IT IS FURTHER ORDERED that, pursuant to Notice of Hearing entered June 27, 2013, the adjudicative proceeding herein shall commence on September 19, 2013, at 10:00 a.m., Pacific Daylight Time.

NOTICE OF HEARING

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ENTERED AT TUMWATER, WASHINGTON, this 16th day of September, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.

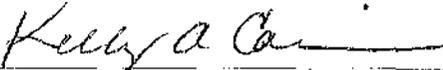


PATRICIA D. PETERSEN
Chief Presiding Officer

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: Stephen L. Below, D.C., Edward I. Clabaugh, Esq., Mike Kreidler, James T. Odiome, John P. Hamje, Esq., Charles Brown, Esq., and Marcia Stickler, Esq.

DATED this 17th day of September, 2013.



KELLY A. CAIRNS