

FILED

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

2014 JUL 15 A 9:19

In the Matter of)
)
PREFERRED CHIROPRACTIC)
DOCTOR, INC.,)
)
 Respondent.)
_____)

Docket No. 13-0134

ORDER ON RECONSIDERATION

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
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This case comes before me on the OIC's Motion for Reconsideration.

1. On September 19, 2013, this case came on for hearing on the merits, to take evidence and hear arguments as to whether a fine of \$152,400 should be imposed on Preferred Chiropractic Doctor, Inc. ("PCD"), as requested in the Insurance Commissioner's May 17, 2013, Notice of Request for Hearing for Imposition of Fines ("Notice"). The Notice alleged that, in violation of RCW 48.155.020(1), PCD acted as the agent/dealer for, represented, marketed and/or sold some 1,524 health care discount plan cards to Washington residents without being licensed in the State of Washington as a discount plan organization.

2. On April 2, 2014, Chief Presiding Officer Patricia D. Petersen entered Findings of Fact, Conclusions of Law and Final Order. Judge Petersen found that PCD had committed violations of applicable law. She concluded, however, that imposition of the minimum fine of \$104,200 allowed under RCW 48.155.130(1)(b) -- the only statute under which she believed the OIC sought relief -- would be "unduly harsh and disproportionate to the violations found herein." Judge Petersen ordered that "no fine shall be imposed on PCD for the violations found above."

3. On April 11, 2014, the OIC timely filed a Motion for Reconsideration.

4. On April 22, 2014, Judge Petersen sent a letter to the OIC, copying PCD, stating that she was "reconsidering the Final Order in this matter" and established a briefing schedule. Judge Petersen stated in her letter that, if the OIC provided timely and adequate notice to PCD that it was seeking to impose a fine under *either* the minimum of \$102,400 that could be imposed under RCW 48.55.130(1)(b) *or* the more flexible standard available under 48.55.130(2), which incorporates RCW 48.155.130(1)(b) and 48.155.130(2), then it would be reasonable to consider imposition of a fine under one of those statutes.

5. On May 7, 2014, PCD filed a Response to the OIC's Motion.

6. On May 12, 2014, the OIC filed a Reply to PCD's Response.

7. On May 29, 2014, before Judge Petersen ruled on the Motion, Commissioner Kreidler appointed me to serve as Hearings Officer and delegated to me the authority to serve as Presiding Officer. Consistent with such appointment and authority, and because Judge Petersen herself is not reasonably available to rule, I consider the merits of OIC's Motion.

8. The Administrative Procedures Act authorizes petitions for reconsideration, but defers to agencies' reconsideration rules, if any. RCW 34.05.470(1). The OIC has not established such

rules. However, the standards for considering motions for reconsideration set out in CR 59 provide a useful frame of reference.

9. After reconsideration, I do not modify Judge Petersen's Findings of Fact, Conclusions of Law and Final Order. I am not satisfied that issues related to the imposition of penalties based on the provisions of RCW 48.155.130(2) were clearly presented during the hearing on the merits. Further, I do not believe it would be appropriate for me to make the factual findings required to impose such penalties without having had the opportunity to weigh the evidence as presented at the hearing.

ORDER

Judge Petersen's April 2, 2014, Findings of Fact, Conclusions of Law and Final Order remain unchanged.

Dated: July 14, 2014



Judge George Finkle (Ret.)
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. Odiorne, John F. Hamje, Esq., AnnaLisa Gellermann, Esq., and Marcia Stickler, Esq.

DATED this 15th day of July, 2014.


KELLY A. CAIRNS