

FILED

2014 APR 28 A 9:46

OIC HEARINGS UNIT
P. J. HENSEN
CHIEF PRESIDING OFFICER

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THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In Re the Matter of

ORDER NO. 13-0216

iCan Benefit Group., LLC, and
iCan Insurance, LLC,
Licensees,

LICENSEES' MOTION TO STRIKE
OIC'S RESPONSE AS UNTIMELY
FILED AND TO STRIKE
DECLARATION OF MARTA
DELEON AS IRRELEVANT AND
UNSUPPORTED

COME NOW Licensees, by and through there undersigned attorney, and herewith move the Chief Presiding Officer to strike the OIC's Response To iCan's Request That This Matter Be Dismissed ("Response") and to strike the Declaration of Marta DeLeon ("Declaration") and that said Response and Declaration be disregarded in their entirety.

The OIC's Response Is Untimely and Disregards the Presiding Officer's Directive

On April 15, 2015, the Chief Presiding Officer sent her letter addressed to both the Licensees' retained attorney and the OIC's staff attorney directing them to "provide any responses you may have within five business days of this letter." On April 16, 2014, both attorneys confirmed with the Paralegal for the OIC's Hearing Unit that the responses were "due by the end of the business day Tuesday, April 22." (See, Exhibit A, attached hereto.)

MOTION TO STRIKE - 1

— KREGER BEEGHLY, PLLC —
999 Third Ave, Suite 3000
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(206)829-2757

1 The OIC's staff attorney completely disregarded and ignored the plain, and
2 confirmed, directive of the Chief Presiding Officer. The OIC did not file its response,
3 as directed, by the end of the business day on April 22; rather, the OIC submitted its
4 Response, and the Declaration, after the end of the business day on April 23, for filing
5 on April 24, effectively two days late.

6 The Chief Presiding Officer is authorized to strike "any redundant, immaterial,
7 impertinent, or scandalous matter." (*Brin v. Stutzman*, 89 Wn. App. 809 (1998); CR
8 12(f).) The OIC's Response is redundant to be sure. But, nothing can be more
9 impertinent than to disregard a direct order of a judge and, as here, submit responsive
10 materials well beyond the time limit due date ordered by the Chief Presiding Officer,
11 which date the OIC's staff attorney knew very well.

12 The OIC's Response should be stricken and disregarded.

13 The Declaration of Marta DeLeon Is Conclusory and Lacks Legal Support

14 Ms. DeLeon states that she is the lead attorney assigned to advise and represent
15 the OIC. However, she has not appeared in this matter as the attorney representing the
16 OIC. Rather, she merely states her belief and unsupported conclusion that "to my
17 knowledge, the OIC has handled administrative hearings . . . through delegated OIC
18 staff, with the approval of the Attorney General's Office."

19 While Ms. DeLeon, as an assistant attorney general and an employee of the
20 Office of the Attorney General, may have been assigned by her superior officer, the
21 Attorney General, to represent the OIC, she offers no legal support for her allegation
22 that the Attorney General can delegate his statutory legal duties or her delegated duties
23 to another state employee, namely, the staff attorney employed by the Insurance
24 Commissioner. This naked conclusory statement cannot stand and certainly cannot be
relied on as authority to assist the Chief Presiding Officer in this matter.

MOTION TO STRIKE - 2

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2 Finally, Ms. DeLeon asserts that "OIC staff have the approval of the Attorney
3 General's Office to handle this administrative hearing." Even assuming that the
4 Attorney General can legally give such approval (which would be an erroneous
5 assumption), Ms. DeLeon does not state when OIC staff would have received such
6 approval for this matter. One must believe, therefore, that such approval would have
7 come as of the date of Ms. DeLeon's Declaration, April 22, 2014. Accordingly,
8 therefore, the OIC staff would not have been authorized to initiate this proceeding
9 when it was initiated several weeks ago.

10 Ms. DeLeon's Declaration must be stricken as immaterial and irrelevant, and
11 should not be considered as anything more than naked conclusions unsupported by
12 authority and argument.

13 DATED this 24th day of April April, 2014

14 KREGER BEEGHLY, PLLC

15 

16 Brian F. Kreger,

17 WSBA Number 10670

18 Attorney for Licensees

CERTIFICATE OF SERVICE

I, Brian F Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I served on April 24, 2014, I caused to be delivered in the manner indicated below a copy of the foregoing document on the following parties at the last known addresses given below:

Hearings Unit	Ms. Andrea Philhower
Patricia Petersen	Office of the Insurance Commissioner
Chief Hearing Officer	5000 Capitol Boulevard
Office of the Insurance Commissioner	Tumwater, WA 98501
5000 Capitol Boulevard	
Tumwater, WA 98501	

via e-mail to kellyc@oic.wa.gov	via e-mail to andreap@oic.wa.gov
via e-mail to Hearings@oic.wa.gov	

via United States Mail to:	via United States Mail to:
Patricia Petersen	Andrea Philhower
P.O. Box 40257	P.O. Box 40257
Olympia, WA 98504-0257	Olympia, WA 98504-0257

Executed on this 24th day of April, 2014 in Seattle, Washington.


Brian F. Kreger

EXHIBIT A

Brian Kreger

From: Cairns, Kelly (OIC) <KellyC@oic.wa.gov>
Sent: Wednesday, April 16, 2014 9:44 AM
To: 'Brian Kreger'
Cc: Philhower, Andrea (OIC)
Subject: RE: iCan Benefit Group, LLC and iCan Insurance LLC, No. 13-0216

Brian and Andrea,

Yes, by my math, I calculate the responses to be due by end of the business day Tuesday, April 22.

Kelly

From: Brian Kreger [<mailto:bk@kregerbeeghly.com>]
Sent: Wednesday, April 16, 2014 9:27 AM
To: Cairns, Kelly (OIC)
Cc: Philhower, Andrea (OIC); bk@kregerbeeghly.com
Subject: RE: iCan Benefit Group, LLC and iCan Insurance LLC, No. 13-0216

Kelly,

Andrea and I just talked about the timeline for complying with Judge Petersen's directive that we should provide any responses to her within five business days of her letter.

The letter was dated and received on April 15. As I count business days from April 15, April 22 would be the due date. Are we correct that the due date for responses is Tuesday, April 22? Would you please confirm the correct response due date for us?

Thank you very much.

Brian

Brian F. Kreger
Kreger Beeghly, PLLC
Attorneys
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

Ofc: 206-829-2757
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From: Cairns, Kelly (OIC) [<mailto:KellyC@oic.wa.gov>]
Sent: Tuesday, April 15, 2014 1:47 PM
To: 'Brian Kreger'; Philhower, Andrea (OIC)
Subject: iCan Benefit Group, LLC and iCan Insurance LLC, No. 13-0216

Mr. Kreger and Ms. Philhower,

Please find attached a letter from Judge Petersen regarding iCan's Objections/Request to Dismiss. A hard copy has also been sent to you.

Kelly A. Cairns
Paralegal, OIC Hearings Unit
360-725-7002
KellyC@oic.wa.gov