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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' RESPONSE
AND RENEWAL OF REQUEST
THAT THIS MATTER BE
DISMISSED

COME NOW Licensees, by and through there undersigned attorney, and herewith present their Response to the request of Chief Hearing Officer, Patricia Petersen, for additional response and argument in the above matter.

Procedural Background

Licensees, iCan Benefits Group, LLC and iCan Insurance, LLC filed their Objection to OIC's Request for Hearing as Contrary to Law; Request to Dismiss OIC's Request; and, in the alternative, Request for Administrative Law Judge (hereafter, "Objection and Request") in this matter on April 2, 2014. The Office of the Insurance Commissioner ("OIC") filed its Response to Licensees' Objection and Request on or about April 3, 2014. The OIC's Chief Hearing Officer heard argument from Licensees' retained attorney and the OIC's staff attorney at a regularly-scheduled hearing on April 3, 2014.

LICENSEES' RESPONSE AND RENEWAL
OF REQUEST FOR DISMISSAL - 1

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1 After hearing argument, Ms. Petersen indicated that she would defer ruling on
2 Licensees' Objection and Request until she had rendered her decision In the Matter of
3 Edmund C. Scarborough and Walter W. Wolf, OIC Docket No. 13-0084
4 ("Scarborough"), which involved legal issues¹ similar to those raised by Licensees in
5 this matter. On April 15, 2014, Ms. Petersen sent her letter to Licensees' retained
6 attorney and OIC's staff attorney in which she requested additional responses from
7 Licensees and the OIC based on her recently-published order in Scarborough. Ms.
8 Petersen also enclosed a copy of her Order on Respondent Scarborough's Motion to
9 Quash (the "Scarborough Order"). Ms. Petersen advised Respondents retained attorney
10 and OIC's staff attorney that she requested responses so that a prompt decision can be
11 made on Licensee's Objection and Request.

12 Licensees' Response is hereby submitted in compliance with the Chief Hearing
13 Officer's request.

14 Summary of Licensees' Response

15 The Constitution of the State of Washington clearly establishes that the State's
16 attorney general shall be the legal adviser of the state officers and shall perform such
17 other duties as may be prescribed by law.

18 The Revised Code of Washington, following the mandate of the Constitution,
19 clearly states that the attorney general shall institute and prosecute all actions and
20 proceedings for the state which may be necessary in the execution of any of the duties
21 of any state officer, including the insurance commissioner, and that the attorney general
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23 _____
24 ¹ The legal issues in this matter as well as in Scarborough are of a critical nature
because they encompass threshold procedural and ethical issues involving the
appropriate legal representation of a state agency in a legal action as well as the
legitimacy of the commencement of a legal or quasi legal action by the agency.

1 shall represent all officials, departments and agencies of the state, including the OIC,
2 before all administrative tribunals or bodies of any nature in all legal or quasi-legal
3 proceedings, and shall advise all officers, departments and agencies of the state in all
4 legal or quasi-legal questions.

5 The attorney general's duties and responsibilities conferred on the attorney
6 general, as established in the Constitution and reconfirmed in the laws of the State of
7 Washington, cannot be delegated by the attorney general to any other person under the
8 established principal of law that a delegated power may not be further delegated by the
9 person to whom such power is delegated.

10 Discussion and Argument

11 **Article III, Section 21 of the Washington State Constitution** clearly and
12 unambiguously establishes what the duty and role of the State's attorney general shall
13 be: "The attorney general shall be the legal adviser to the state officers, and shall
14 perform such other duties as may be prescribed by law." (Emphasis added). Those
15 additional duties are found in several sections of the Revised Code of Washington,
16 which pertain precisely to this matter.

17 **RCW 43.10.030 General powers and duties**, states, in pertinent part:

18 "The attorney general shall:

19 (1) Appear for and represent the state before the supreme court or the court of
20 appeals in all cases in which the state is interested;

21 (2) Institute and prosecute all actions and proceedings for, or for the use of the
22 state, which may be necessary in the execution of the duties of any state officer;
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1 (3) Defend all actions and proceedings against any state officer or employee
2 acting in his or her official capacity, in any of the courts of this state or the
3 United States;" (Emphasis added.)

4 **RCW 43.10.040 Representation of boards, commissions and agencies.**

5 "The attorney general shall also represent the state and all officials,
6 departments, boards, commissions and agencies of the state in the courts, and
7 before all administrative tribunals or bodies of any nature, in all legal or quasi
8 legal matters, hearings, or proceedings, and advise all officials, departments,
9 boards, commissions, or agencies of the state in all matters involving legal or
10 quasi legal questions, except those declared by law to be the duty of the
11 prosecuting attorney of any county." (Emphasis added.)

12 **RCW 48.02.080 Enforcement.**

13 "(1) The commissioner may prosecute an action in any court of competent
14 jurisdiction to enforce any order made by him or her pursuant to any provision
15 of this code.

16 (2) If the commissioner has cause to believe that any person has violated any
17 penal provision of this code or of other laws relating to insurance he or she shall
18 certify the facts of the violation to the public prosecutor of the jurisdiction in
19 which the offense was committed.

20 (3) If the commissioner has cause to believe that any person is violating or is
21 about to violate any provision of this code or any regulation or order of the
22 commissioner, he or she may:

23 (a) issue a cease and desist order; and/or
24

1 (b) bring an action in any court of competent jurisdiction to enjoin the
2 person from continuing the violation or doing any action in furtherance thereof.

3 (4) The attorney general and the several prosecuting attorneys throughout the
4 state shall prosecute or defend all proceedings brought pursuant to the
5 provisions of this code when requested by the commissioner.” (Emphasis
6 added.)

7 **RCW 43.10.067 Employment of attorneys by others restricted.**

8 “No officer, director, administrative agency, board, or commission of the state,
9 other than the attorney general, shall employ, appoint or retain in employment
10 any attorney for any administrative body, department, commission, agency, or
11 tribunal or any other person to act as attorney in any legal or quasi legal
12 capacity in the exercise of any of the powers or performance of any of the
13 duties specified by law to be performed by the attorney general, except where it
14 is provided by law to be the duty of the judge of any court or the prosecuting
15 attorney of any county to employ or appoint such persons: PROVIDED, That
16 RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the
17 administration of the commission on judicial conduct, the state law library, the
18 law school of the state university, the administration of the state bar act by the
19 Washington State Bar Association, or the representation of an estate
20 administered by the director of the department of revenue or the director's
21 designee pursuant to chapter 11.28 RCW.” (Emphasis added.)

22 The exact legal issue presented in this matter (namely, that the attorney general
23 is the *only* attorney who is authorized to represent a state officer and state agency (in
24 this matter, the insurance commissioner) and initiate a proceeding on his behalf), was

1 presented to the Washington Supreme Court in *Goldmark v. McKenna*, 172 Wn. 2d
2 568, 259 P. 3d 1095 (2011). In that case, the attorney general had refused to prosecute
3 an appeal at the request of the commissioner of public lands. The commissioner sought
4 a writ of mandamus to compel the attorney general to represent that agency in pursuing
5 an appeal of an adverse lower court decision. The Supreme Court relied on the very
6 same provisions of Const. art. III, § 21, RCW 43.10.040, RCW 43.10.067 and a statute
7 similar to RCW 48.02.080 which requires the attorney general to represent the
8 ~~insurance commissioner~~ (that similar provision in *Goldmark* is RCW 43.12.075
9 requiring the attorney general to represent the commissioner of public lands). The
10 Court held that the attorney general's duty to represent the agency is mandatory and
11 that the attorney general has no discretion to deny the commissioner legal
12 representation. The Court noted, "The plain language of the statutes, however, leaves
13 little to question" that "the attorney general has a statutory duty to represent the
14 commissioner." (*Goldmark* at 573.) The Court continued, "Moreover, only the
15 attorney general, or an SAAG [special assistant attorney general] may represent the
16 commissioner since RCW 43.10.067 prohibits the commissioner from hiring outside
17 counsel." (*Id.*, *emphasis added*.) The Court further noted that, "... pursuant to RCW
18 43.10.067, the commissioner may not "employ, appoint, or retain . . . any attorney . . .
19 to act in any legal or quasi legal capacity in the performance of any of the duties
20 specified by law to be performed by the attorney general." RCW 43.10.067. If the
21 attorney general could refuse to represent the commissioner, then the commissioner
22 could be left without any legal representation whatsoever." * * * "Instead, it appears
23 the commissioner has the choice of one attorney to represent him, and that is the
24 attorney general. The attorney general, however, has no choice but has a statutory duty

1 to represent his client, the commissioner.” (*Goldmark* at 573-4; quotes in original;
2 emphasis added.)

3 The attorney general offered various arguments to the Court that the Office of
4 the Attorney General has broad discretion in deciding which cases the office will
5 undertake to represent on behalf of a particular state agency. The Supreme Court
6 rejected all those arguments, stating: “No contrary legislative intent [to the above cited
7 statutes] has been offered by the attorney general, so we conclude that the attorney
8 general has a statutory duty to provide the commissioner with legal representation.”
9 (*Id.* at 575.) In concluding that a writ of mandamus was appropriate, the Court
10 concluded: “Given the mandatory language of the statute and the prohibition of hiring
11 outside counsel, no discretion is involved, and representation is required.” (*Id.* at 582;
12 emphasis added.)

13 In *Goldmark*, the attorney general also challenged the Supreme Court to
14 concede that its holding in *State v. Gattavara*, 182 Wash. 325, 47 P.2d 18 (1935)
15 somehow supported the attorney general’s view that he had discretionary ability
16 regarding whether he would or would not provide legal representation to the
17 commissioner. The Court refuted this argument and explained that *Gattavara* was not
18 concerned with the attorney general representing the state agency, but rather who has
19 authority to initiate legal proceedings.

20 The Court’s holding in *Gattavara* is very instructive in the present matter
21 before the OIC’s Hearing Officer. That case was brought on a motion to quash the
22 summons and dismiss the state’s case against the appellants because the matter had not
23 been brought by the attorney general or by anyone authorized by law to bring the action
24 for the state. The Court recited the same provision of the Constitution as above, Article

1 III, Section 21, and those sections of the law that are the precursors to RCW
2 43.10.030(2) and RCW 43.10.040, set forth above. Rem. Rev. Stat. § 112 (P.C. 6574-
3 3), as set out in the Court's opinion, reads: "Sec. 3. The attorney general shall have the
4 power and it shall be his duty: (2) To institute and prosecute all actions and
5 proceedings for, or for the use of the state which may be necessary in the execution of
6 the duties of any state officer." Referring to both the constitutional and statutory
7 mandates, the Court held: "Although the constitutional provision above quoted is not
8 self-executing, when the duties of the *Attorney General* are prescribed by statute and
9 the statute has for its purpose the authorization of proper state officers to bring actions,
10 that authority is exclusive." (*Gattavara* at 329; italics in original; emphasis added.)

11 The attorney general's statutory duties are exclusive to the attorney general.
12 Licensees anticipate that the OIC may offer a declaration of one of the assistant
13 attorneys general in this pending matter, similar to the declaration of Marta DeLeon
14 submitted in the Scarborough matter, in which Ms. DeLeon asserted that to her
15 knowledge, "the OIC has handled administrative hearings before the Insurance
16 Commissioner through delegated staff with the approval of the Attorney General's
17 Office." Ms. DeLeon also asserts that "Delegated OIC staff have the approval of the
18 Attorney General's Office to handle this administrative hearing."² However, Ms.
19 DeLeon does not cite to any actual "approval of the Attorney General's Office," nor
20 does she attach anything in writing from the Attorney General that allegedly gives such
21 approval, even assuming the Attorney General could give such approval. Most
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24 ² The decision set forth in the Scarborough Order appears to have been based in large
part on the Hearing Officer's reliance on Ms. DeLeon's declaration. That reliance is
misplaced since Ms. DeLeon has no authority to suggest that the attorney general's
exclusive duties can be delegated to an employee of an entirely different state agency.

1 importantly, Ms. DeLeon cites no legal authority giving the attorney general the power
2 or right either to delegate his constitutional and statutory duty to represent the OIC or
3 to direct an employee of another state agency to perform those duties that are
4 exclusively his to perform.³ Surely, this assertion by Ms. DeLeon is nothing more
5 than her unverifiable belief and is not sufficient evidence to support or prove Ms.
6 DeLeon's personal understanding of what the attorney general has done or can do.
7 More importantly, it is certainly not even close to that requisite standard of adequate
8 legal authority on which the Hearing Officer can rely to make a legal determination that
9 the attorney general either has the authority to give approval to an employee of another
10 state agency to handle those duties that belong exclusively to the attorney general, or,
11 even assuming that he does have such authority, that he has actually delegated his
12 duties over to an employee, not his own, but of another state agency. In fact, there is a
13 good reason why Ms. DeLeon does not cite any legal authority for those propositions:
14 There simply is no such authority given to the attorney general anywhere in
15 Washington law. And, if the OIC attempts to submit another similar declaration by
16 Ms. DeLeon, or another assistant attorney general, in this matter, the Hearing Officer
17 should disregard it as legally unfounded and unsupported supposition and speculation.

18 Even more to the point in this regard, this is what the Supreme Court had to say
19 about a purported attempt by someone in the attorney general's office to authorize or
20 legitimize the initiating of the legal proceeding at issue in *Gattavara*: "There is
21 interpolated into this record, though no part of it, a letter from the *Attorney General* to
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23 ³ To the contrary, in his own website, the attorney general himself repeats the mandates
24 found in Const. art. III, § 21 and RCW 43.10.040 and states unequivocally that,
"According to state law, the Office of the Attorney General is responsible for
representing the state of Washington, its officials, departments, boards, commissions,
and agencies." (See, www.atg.wa.gov/Divisions/).

1 one of the attorneys, of a date after the initiation of this action in the lower court,
2 attempting to authorize its maintenance. As was said by the United States supreme
3 court in the *Throckmorton* case, *supra*, it is not in that way that the Attorney General of
4 this state should make himself officially responsible for the institution and maintenance
5 of such action against any party. There is no signature by or on behalf of the *Attorney*
6 *General* to the summons and complaint in this action, and the attorneys who instituted
7 and maintained the action were then without such power and authority.” (*Gattavara*, at
8 332; italics in original; emphasis added.) Whereupon the Court stated: “We conclude,
9 therefore, that the action should have been dismissed on the motion to quash, and that
10 the writs of garnishment should be dissolved.” (*Gattavara*, at 333.)

11 As further legal evidence that the attorney general, and *only* the attorney general
12 may represent the insurance commissioner in this proceeding, one needs to look no
13 farther than RCW 43.10.040, cited in full above at page 4: “The attorney general shall
14 also represent the state and all officials, departments, boards, commissions and
15 agencies of the state in the courts, and before all administrative tribunals or bodies of
16 any nature, in all legal or quasi legal matters.” This is a statutory mandate following
17 the constitutional mandate establishing the office and the duties of the attorney general.
18 The statute could not be clearer and there is no room for varying interpretations of what
19 that law directs the attorney general to do. *Sanders v. State*, 166 Wn.2d 164, 207 P.3d
20 1245 (2009), speaks directly to this point. *Sanders* involved a matter where the
21 attorney general did not represent a state official in a legal action brought against the
22 official because the official’s acts complained of were unauthorized and unethical. In
23 upholding the attorney general’s refusal of legal representation under those
24 circumstances, the Supreme Court took the opportunity to provide the Court’s opinion

1 on interpreting the intent of RCW 43.10.040, to wit: "The court's primary duty in
2 interpreting any statute is "to discern and implement the intent of the legislature." *State*
3 *v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). In this case, the statute under which
4 Justice Sanders seeks his fees is RCW 43.10.040. As the Court of Appeals notes, RCW
5 43.10.040 was enacted in 1941 "to end the proliferation of attorneys hired by various
6 state agencies and place the authority for representation of state agencies in the
7 Attorney General." *State v. Herrmann*, 89 Wn.2d 349, 354, 572 P.2d 713 (1977)."
8 (*Sanders* at 171; quotes in original; emphasis added.)

9 The Washington State Constitution directs that the attorney general "shall be
10 the legal adviser of the state officers, and shall perform such other duties as may be
11 prescribed by law." (Const. art. III, § 21). Those additional legal duties are statutorily
12 prescribed in RCW 43.10.040, RCW 48.02.080, and RCW 43.10.067. The plain
13 language of the constitution and the laws leaves little to question regarding the attorney
14 general's mandate to represent the OIC and the insurance commissioner, and to initiate
15 any and all legal and quasi legal proceedings on behalf of the OIC and the insurance
16 commissioner. (See also, *Goldmark v. McKenna, supra*).

17 There is no other provision in either the Constitution or the Revised Code of
18 Washington that in the least bit modifies the mandatory duties assigned to the attorney
19 general. Nor is there any statute that grants the attorney general discretion in
20 representing the state and its agencies. (See, *Goldmark, supra*, "the attorney general
21 has a statutory duty to represent the commissioner.") And, most importantly, there is
22 no statutory authority given to the attorney general to delegate these statutory duties to
23 another office.⁴

24 _____
⁴ It is such an obvious rule of law that one state agency cannot direct another, different
state agency to undertake certain responsibilities and actions ascribed to the first state

1 The attorney general's constitutional and statutory duties to represent state
2 officials and state agencies cannot be delegated. The Office of the Attorney General
3 has, in fact, issued opinions in cases where a state official has attempted to delegate
4 statutorily imposed duties to another person. The attorney general has determined
5 those attempts to delegate statutory duties are improper and of no effect. In AGLO
6 1974 No. 91, the attorney general answered a question whether a member of the state
7 printing committee could designate an alternate or substitute to act in the member's
8 behalf in performing certain duties imposed by law on the specific committee member.

9 The attorney general answered the question in the negative. The attorney general
10 reviewed the several statutes that established the mandatory duties and responsibilities
11 of members of the committee and found that the duties in question could not be
12 delegated by the member to any other person. The attorney general based his
13 determination on the Supreme Court's holding in *In re Puget Sound Pilots Association*,
14 63 Wn.2d 142, 385 P.2d 522 (1963) and also the Supreme Court's holding in
15 *Ledgering v. State*, 63 Wn.2d 94, 385 P.2d 522 (1963). The attorney general
16 summarized the *Pilots Association* case very well: "In the Pilot's Association case, the
17 court was presented with a situation in which the then director of the department of
18

19 agency, that there is no need for a law to formalize it. Certainly, if such authority were
20 to be given any state agency, it would have to be clearly stated in specific legislation to
21 that effect. There is no legislation and no statute giving the attorney general authority
22 to defer and direct to another agency, the attorney general's statutory duties to represent
23 the state and its agencies. "Powers conferred upon a public officer can be exercised
24 only in the manner and under the circumstances prescribed by law, and any attempted
exercise thereof in any other manner or under different circumstances is a nullity." *In
Re Jullin*, 23 Wn.2d 1, 158 P.2d 319, 160 P.2d 1023 (1945); *In re Elvigen's Estate*, 191
Wash. 614, 71 P.2d 672 (1937). "Agencies do not have implied authority to determine
issues outside of that agency's delegated functions or purpose. Nor can agency rules or
regulations amend legislative enactments." *Turek v. State*, 123 Wn.2d 120, 864 P.2d
1382 (1994).

1 labor and industries, who was statutorily a member of the state board of pilotage
2 commissioners by virtue of RCW 88.16.010, had attempted to authorize another
3 individual within the department to sit and act in his place. Finding no statutory
4 authorization for such a delegation, the court held it [the attempted delegation of
5 authority] invalid." (AGLO 1974 No. 91, at page 2.)

6 The Supreme Court in *Pilots Association* held as follows: "There seems to be
7 nothing in either the Puget Sound Pilotage Act or the Administrative Procedure Act
8 that authorizes a delegation of authority." * * * "The rule is well stated in 42 Am. Jur.,
9 Public Administrative Law § 73, as follows: " 'It is a general principle of law,
10 expressed in the maxim "delegatus non potest delegare," that a delegated power may
11 not be further delegated by the person to whom such power is delegated. Apart from
12 statute, whether administrative officers in whom certain powers are vested or upon
13 whom certain duties are imposed may deputize others to exercise such powers or
14 perform such duties depends upon whether the particular act or duty sought to be
15 delegated in ministerial, on the one hand, or on the other, discretionary or quasi-
16 judicial. Merely ministerial functions may be delegated to assistants whose
17 employment is authorized, but there is no authority to delegate acts discretionary or
18 quasi-judicial in nature.' " (*Pilots Association* at 145-146; internal quotes in original.)

19 The Supreme Court's holding in *Pilots Association* that validated the legal
20 maxim that one to whom duties have been delegated may not delegate those duties to
21 another as the rule of law in Washington state was recognized and relied on by the
22 attorney general in declaring such delegation of authority as contrary to law. (See also,
23 the same holding in *Ledgering v. State, supra*, and the attorney general's reliance
24 thereon). The *Pilot's Association* Court did note that, in some circumstances certain

1 "ministerial" acts may be delegated to subordinates over whom the official has control
2 and for whom the official is responsible. However, it is clear and obvious that the
3 mandatory duties imposed on the attorney general under Article III, Section 21 of the
4 State Constitution and the provisions of RCW 43.10.040 are certainly not ministerial.
5 These are legal, quasi legal, and professional functions that cannot be delegated to any
6 other office or person other than to those special assistant attorneys general employed
7 in the Office of the Attorney General. Beyond that, there can be no delegation and any
8 attempt to do so would render the delegation invalid and a nullity. (See also, *In Re*
9 *Jullin, supra.*)

10 The attorney general also rendered an opinion on a question presented to his
11 office asking, "Can the state, under the provisions of Chapter 178, Laws of 1959,
12 assign to a private insurance agent, broker or association the determination of and
13 placement of the state's requirements for volume purchases of insurance and faithful
14 performance bonds?" In this case also, the attorney general answered the question in
15 the negative. (AGO 65-66 No. 54). After reviewing all the relevant statutes under
16 which the procurement of insurance and public official bonds was specifically
17 delegated to the director of general administration, the attorney general turned to the
18 legal maxim, *delegatus non potest delegare* and the Supreme Court's approval of that
19 rule of law for the State of Washington in *Pilots Association, supra*, and noted that the
20 rule applies "when the legislature has vested discretionary power in an officer, such
21 responsibility is vested exclusively in such officer" and cannot be further delegated.
22 (See, AGO 65-66 No. 54 at page 5.)

23 It is abundantly clear that only the attorney general is authorized to represent
24 the insurance commissioner in this matter. In point of fact and law, the attorney

1 general is under a constitutional and statutory mandate to act as the only attorney for
2 the OIC and the insurance commissioner. Furthermore, it bears repeating that, as the
3 Supreme Court observed and held, RCW 43.10.067 specifically prohibits the head of
4 any state agency – including the Office of the Insurance Commissioner – other than the
5 attorney general from employing, appointing, or retaining any attorney to act as the
6 attorney for the agency in any legal or quasi legal capacity. While the attorney general
7 may employ such attorneys, the insurance commissioner cannot. In this matter brought
8 by the OIC under documents signed by the OIC’s “staff attorney,” it is conclusive
9 under all applicable law, that the OIC’s “staff attorney” does not have authority “to act
10 as attorney in any legal or quasi legal capacity” for the OIC. And, until and unless such
11 a “staff attorney” is actually employed by the attorney general to act on the attorney
12 general’s behalf in carrying out the attorney general’s mandatory duties, the OIC’s staff
13 attorney is legally disqualified from any further attempts to represent the insurance
14 commissioner or his agency. And, any attempts by the OIC’s “staff attorney” to so act
15 in any legal or quasi legal capacity are likely to be met with objection.

16
17 Conclusion

18 This matter presently before the Hearing Officer has not been brought
19 according to the clear and unambiguous mandates of the Constitution and Laws of the
20 State of Washington. Accordingly, this matter should be dismissed.

21 The Constitution of the State of Washington has clearly established that the
22 attorney general shall be the only attorney authorized to represent the insurance
23 commissioner and the OIC.

24 In accord with that constitutional mandate, the laws of the State of Washington
confirm, in equally clear and unmistakable terms, that the attorney general shall be the

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only attorney who is authorized to represent the insurance commissioner in a legal or quasi legal capacity and to initiate legal and quasi legal proceedings on his behalf.

The insurance commissioner is statutorily prohibited from employing any attorney to represent him or his agency, and, if the insurance commissioner desires legal representation to assist him in executing his responsibilities as a state officer, he must request that the attorney general provide such legal representation. The insurance commissioner has the choice of having no attorney represent him and the OIC in a legal or quasi legal capacity or having the attorney general, and only the attorney general represent him and the OIC as mandated under the law.

The attorney general has no choice but to represent the insurance commissioner in any legal or quasi legal capacity and to initiate appropriate legal or quasi legal proceedings for and on behalf of the insurance commissioner whenever requested.

The constitutional and statutory authority and duties imposed on the attorney general to represent the state officers and state agencies cannot be delegated. No law exists that authorizes the attorney general to delegate his duties and responsibilities to represent the insurance commissioner and the OIC to any other person except those attorneys employed by the attorney general. Anyone other than the attorney general, including any other attorney, who attempts to act in a legal or quasi legal capacity for the insurance commissioner acts in contravention of the law. And, any action brought or initiated by any other person other than the attorney general, including any other attorney, is brought without legal authority rendering such proceeding of no effect.

The Supreme Court of the State of Washington has upheld these clear constitutional and statutory mandates imposed on the attorney general on several occasions. The holdings of the Supreme Court, as well as the legal opinions of the

1 attorney general, re-affirm these legal principles and support the argument presented
2 herein that the attorney general is the only attorney who has both the constitutional
3 authority and the legal duty to represent the insurance commissioner, that this authority
4 and duty cannot be delegated to another person, and that state officers, including the
5 insurance commissioner, are prohibited from employing any other attorney to represent
6 them or their respective agency.

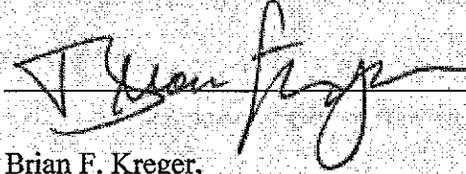
7 Finally, Licensees renew their Request that this matter be dismissed. This
8 proceeding has been brought in contravention of the legal requirement that the attorney
9 general, and only the attorney general, shall represent the insurance commissioner and
10 initiate legal or quasi legal proceedings on behalf of the insurance commissioner and
11 the OIC. The attorney general has not appeared in this matter and, until the attorney
12 general does appear in this matter, the insurance commissioner has no legal
13 representative who can act in a legal or quasi legal capacity or exercise any such legal
14 duties. This proceeding has been brought by a person who has no authority to act as
15 attorney for the insurance commissioner and the OIC in this matter. If the insurance
16 commissioner desires to bring an action such as this against the Licensees, then he must
17 request that the attorney general initiate such a proceeding as is authorized under the
18 law.

19 This current matter, having been improperly and illegally brought, must be
20 dismissed.

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Respectfully submitted this 22nd day of April, 2014.

KREGER BEEGHLY, PLLC



Brian F. Kreger,

WSBA Number 10670

Attorney for Licensees

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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 22, 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:

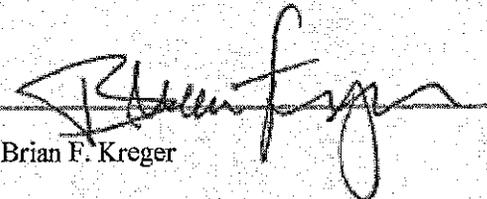
Hearings Unit
Patricia Petersen Chief Hearing Officer
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501
via e-mail to kellyc@oic.wa.gov
via e-mail to Hearings@oic.wa.gov

Ms. Andrea Philhower
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501
via e-mail to andreap@oic.wa.gov

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

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

Executed on this 22nd day of April, 2014 in Seattle, Washington.


Brian F. Kreger