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INSURANCE COMMISSIONER

OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER
MATTER NO. 13-0216

IN THE MATTER OF

iCAN BENEFIT GROUP, LLC and iCAN
INSURANCE, LLC

Licensees.

OIC's RESPONSE TO iCAN's OBJECTION
TO OIC's REQUEST FOR HEARING,
MOTION TO DISMISS AND, IN THE
ALTERNATIVE, REQUEST FOR
ADMINISTRATIVE LAW JUDGE
ASSIGNED UNDER CHAPTER 34.12 RCW

The Insurance Commissioner of the State of Washington hereby responds to "Licensees' Objection to OIC's Request for Hearing as Contrary to Law; Request to Dismiss OIC's Request; [SIC] and, in the alternative, Request for Administrative Law Judge Assigned under chapter [SIC] 32.12 RCW [SIC]".¹

Licensees are entitled to a hearing by an Administrative Law Judge assigned under Chapter 34.12 RCW.

OIC acknowledges the provision of RCW 48.04.010(5) which entitles both iCan Benefit Group, LLC and iCan Insurance, LLC (collectively, "iCan") – as licensed Washington Insurance Producers – to a hearing by an Administrative Law Judge assigned under Chapter 34.12 RCW. OIC therefore has no objection to this request.

Licensees' "Request to Dismiss OIC's Request" does not support the relief requested.

Licensees request that OIC's Request for Hearing be dismissed is based upon the argument that "It would be inappropriate for the OIC's Hearing Officer to conduct this prehearing conference, or to conduct any other hearing, in this matter because the OIC has attempted to initiate a proceeding that is in direct conflict with the clear and unambiguous mandates of Washington law. The OIC attempts to initiate an adjudicative or quasi-adjudicative proceeding before an administrative tribunal upon the Request for a Hearing filed by the OIC's Staff Attorney. Only the Washington State Attorney General may initiate such proceedings." Licensees cite RCW 43.10.030(2) for this proposition.

¹ OIC assumes that iCan refers to hearings by the Office of Administrative Hearings, which are governed under Chapter 34.12 RCW, and to which a Licensee is entitled under RCW 48.04.010(5).

Licenses ignore both the clear statement of the Commissioner's authority to hold a hearing under RCW 48.04.010, and the factual operation of OIC's Notice of Request for Hearing.

"The Commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The Commissioner shall hold a hearing if required by any provision of this code[.]" RCW 48.04.010(1)(a) (emphasis added). This is unequivocal statutory authority for the Commissioner to hold a hearing to impose a fine against iCan for its violations of the Insurance Code. Moreover, the Commissioner is *required* to hold this hearing prior to levying the fine, by the requirement of RCW 48.17.560. That statute authorizes the Commissioner to impose the fine sought, but only "after hearing or upon stipulation by the licensee[.]" (Emphasis added.)

As a designee of the Commissioner, the undersigned filed a Notice of Request for Hearing on his behalf. Whether or not Licenses prevail upon their argument that the undersigned is not authorized to act as the Commissioner's designee at that hearing, there is no prohibition – nor does licensee claim there is – upon the Commissioner's designee noting, on his behalf, that a hearing will be held.

The Notice of Request for Hearing does not, as Licenses claim, "attempt[] to initiate a proceeding that is in direct conflict with the clear and unambiguous mandates of Washington law". As set forth above, the proceeding is unambiguously authorized, indeed *required*, under RCW 48.04.010(1)(a) and RCW 48.17.560. Licenses cannot, therefore, object to the hearing itself. Licenses' only available objection – and the only one made - is to the undersigned acting as the Commissioner's designee at that hearing.

Therefore, the eventual outcome of Licenses' objection to the Commissioner's designation of a staff attorney to act for him at the hearing is irrelevant to the holding of a prehearing conference in order to make arrangements for that hearing. The objection affects only to who will act for the Commissioner at that hearing. The Commissioner will either designate a staff attorney to act for him at that hearing, or will be represented by the Attorney General. Either way, the hearing will occur. Delay in scheduling the hearing will add additional delay to a matter that has already been pending for far too long.

For that reason, OIC respectfully submits that the Licenses' Motion to Dismiss is contrary to law and may not be granted. OIC has explicit authority to hold the requested hearing. Therefore, OIC respectfully requests that this matter be transferred to the Office of Administrative Hearings ("OAH") per Licenses' request for scheduling of a hearing as soon as possible. The issue of who will appear on behalf of the Commissioner at that hearing will need to be settled prior to the hearing, but is not relevant to whether the hearing will occur. It will. Thus, the transfer of this matter for scheduling of that hearing can and should occur at this time.

Licensees' "Request to Dismiss OIC's Request" is legally unsupported.

Licensees argue that the Commissioner may not designate a staff attorney to act for him at the requested hearing. The precise arguments put forward by Licensees in their motion are already before the Hearing Officer in another matter, In the Matter of Edmund C. Scarborough and Walter W. Wolf, OIC Docket No. 13-0084. OIC has responded to the arguments in that matter, and will add nothing to the analysis of this issue by repeating them here.

OIC appreciates that, because Licensees have made the arguments here, this issue will need to be resolved prior to the hearing in this matter. Therefore, OIC will not object to the OAH scheduling of this hearing following the outcome of the pending Motion to Quash in the Scarborough matter. (It is noted that Licensees' counsel has filed at least one declaration in that matter.) However, resolution of *who* will present OIC's position in support of the fine against iCan is irrelevant to the fact that there *will* be a hearing.

Therefore, OIC simply relies upon the arguments and authority submitted on this issue in the Scarborough matter in reply to Licensees' arguments here, and respectfully requests that the prehearing conference in this matter be held as scheduled and that this matter be transferred to OAH to be scheduled for hearing as soon as possible.

Respectfully submitted this 2nd day of April, 2014.

MIKE KREIDLER
Insurance Commissioner

By 
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