



FILED

OFFICE OF
INSURANCE COMMISSIONER

2014 APR 25 P 4: 20

OIC HEARINGS UNIT
P. J. HEN
CIT. 10/13/13 10:00 AM

IN THE MATTER OF

MATTER NO. 13-0216

iCAN BENEFIT GROUP, LLC and iCAN
INSURANCE, LLC

OIC's RESPONSE TO LICENSEES'
MOTION TO STRIKE OIC'S RESPONSE
AND DECLARATION OF MARTA
DeLEON

Licenseses.

The Insurance Commissioner of the State of Washington hereby responds to "Licensees' Motion to Strike OIC's Response as Untimely Filed and to Strike Declaration of Marta DeLeon as Irrelevant and Unsupported" ("Licensees' Motion to Strike").

The undersigned regretfully acknowledges that OIC's "Response to iCan's Renewal Of Request That This Matter Be Dismissed" ("OIC's Response") was filed after the deadline set by the Hearing Officer. That deadline was close of business on April 22, 2014. OIC's Response was filed at 4:45 p.m. on the following day. The undersigned takes full responsibility for her error. No disrespect was intended toward the Hearing Officer, Mr. Kreger, or iCan.¹

No Prejudice Has Occurred to Licensees.

The Licensees request that OIC's Response and Ms. DeLeon's declaration be stricken because OIC's response was untimely. A trial court judge has discretion to accept or reject untimely filings. *See, e.g., Southwick v. Seattle Police Officer John Doe No 1*, 145 Wn. App. 292, 301 (2008). "A reviewing court will not reverse a lower court's ruling on the basis of an untimely filing absent a showing of prejudice." *See, e.g., Hanson Indus.,*

¹ Although the reasons for the late filing may not be relevant, I offer them out of respect to the affected parties. I am co-counsel in the matter of Seattle Childrens Hospital, which involves several issues of first impression and national importance. That matter has, of necessity, been a priority. More immediately, I am one of four members of a work team to redraft Washington's regulations governing provider network access for health benefit plans. The rules are of great consequence and stakeholder interest, generating hundreds of stakeholder comments. The Administrative Procedure Act requires each comment to be addressed in writing. The hearing on those rules was held on the same day OIC's Response in this matter was due. OIC received dozens of comment letters on the day before and the day of the hearing, and I have been working with the team to address each before the final rules can be amended and adopted. Time is of the essence; the rules affect the filings of health benefit plans for 2015, which filings are occurring now. As a result, I was focused on other priorities and missed the deadline. During this flurry of activity, I remembered that the Response was due, and emailed Ms. Cairnes asking about the deadline to save time, rather than looking through the file materials to find it. At that moment, I did not recall the email conversation in which the deadline was confirmed. I humbly apologize to all affected parties.

Inc. v. Kutschkau, 158 Wn. App. 278, 291 (2010), *citing* Brown v. Safeway Stores, Inc., 94 Wn.2d 359, 364, 617 P.2d 704 (1980).

Review of Washington case law shows that the hallmark of decisions to admit or reject untimely filings has long been analysis of prejudice to an opposing party. *See, e.g., Id.; also, Devine v. Goggin*, 60 Wn.2d 144 (1966); Spokane & I. Lumber Co. v. Stanley, 25 Wash. 653 (1901). Licensees neither allege nor make a showing of prejudice. Indeed, the word “prejudice” does not appear in Licensees’ Motion. Washington courts prefer decisions on the merits to decisions based upon technical violations. *See, e.g., State v. Olson*, 126 Wn.2d 315, 318-319 (1995), *citing* RAP 1.2(a). Because Licensees would in no way be harmed by the acceptance of OIC’s untimely-filed Response, OIC respectfully requests that their Motion be denied and that Licensee’s Motion to Dismiss be decided on its merits.

The Relief Sought by Licensees Would Have No Effect.

The instant Motion to Strike is in the context of Licensees’ Motion to Dismiss this case in its entirety based upon Licensees’ argument that the Commissioner may not designate a staff attorney to act for him at the requested hearing. However, as of this third pleading in support of that Motion to Dismiss, Licensees still have not addressed the issue before the Hearing Officer: namely, that the Commissioner himself is not only authorized, but statutorily required, to hold this hearing, and the undersigned is authorized to sign the Notice of Hearing on the Commissioner’s behalf.

Ms. DeLeon’s Declaration is entirely unnecessary for the Notice of Hearing to be effective. Resolution of who will present OIC’s position in the hearing on this matter remains irrelevant to the fact that the Commissioner’s Notice is effective. It is similarly irrelevant to Licensees’ request (unopposed by OIC) that this matter be transferred to OAH to be scheduled for hearing as soon as possible. OIC respectfully submits that, regardless of the Hearing Officer’s acceptance or rejection of OIC’s Response and Ms. DeLeon’s Declaration, there would still be no basis upon which to dismiss this matter at this stage.

Respectfully submitted this 25th day of April, 2014.

MIKE KREIDLER
Insurance Commissioner

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