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OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

2014 APR 30 P 12:28

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0216
)	
iCAN BENEFIT GROUP, LLC and)	ORDER DENYING LICENSEES'
iCAN INSURANCE, LLC,)	REQUEST FOR DISMISSAL
)	
Respondents.)	
)	

TO: iCan Benefit Group, LLC and
iCan Insurance, LLC
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COPY TO: Mike Kreidler, Insurance Commissioner
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John F. Hamje, Deputy Commissioner, Consumer Protection Division
Andrea Philhower, 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

On March 17, 2014, the Insurance Commissioner ("OIC") filed a Notice of Request for Hearing for Imposition of Fines pursuant to RCW 48.17.560 and 48.30.010(6), alleging that that Licensees solicited Washington residents for the sale of insurance from some 20 carriers when Licensees were in fact only appointed by three insurers in Washington, and other activities, and thereby violated



several specified provisions of the Insurance Code and regulations. In response, on April 3, Licensees filed their Licensees' Objection to OIC's Request for Hearing as Contrary to Law and Request to Dismiss OIC's Request [for Hearing] ("Licensees' Objection and Request to Dismiss"), which were based upon their argument that this proceeding was not initiated by, and in this proceeding the OIC is not represented by, the Attorney General as Licensees argue is required. The specific proceeding herein, therefore, was to hear and determine Licensees' Objection and Request to Dismiss. During prehearing conference held April 3, both parties agreed that a decision on Licensees' Objection and Request to Dismiss should wait until entry of the decision on this issue made in *In the Matter of Scarborough*, Docket No. 13-0084. That decision was filed on April 7, and by letter dated April 15 both parties in this instant proceeding were allowed to file Responses to that decision, which they did on April 23.

In entering the decision herein, the undersigned has carefully considered Licensees' Objection and Request to Dismiss filed April 3, 2014; the decision in *Scarborough*, i.e., Order on Respondent Scarborough's Motion to Quash entered April 7; Licensee's Response and Renewal of Request that this Matter be Dismissed filed April 23 ("Licensee's Response"); OIC's Response to iCan's Renewal of Request that this Matter be Dismissed filed April 23 ("OIC's Response"); Licensees' arguments included in their Motion to Strike Declaration of Marta DeLeon as Irrelevant and Unsupported; and the entire hearing file.¹ As set forth in those pleadings, the undersigned has considered the arguments of the parties which included provisions of Title 48 RCW; Title 34 RCW; and chapter 43.10 RCW. The undersigned has also considered the fact that, in addition to these statutes, as the Licensees argue, Washington Constitution Art. III Sec. 21 provides, in material part, that [t]he attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law.² Contrary to the OIC's statement in its OIC's Response, in her April 15 letter forwarding the *Scarborough* decision to the parties as agreed upon, the undersigned did not request that the OIC obtain pre-approval from the Attorney General to have its delegated staff handle this instant matter; instead, she simply gave the parties five business days to respond to the *Scarborough* decision as appropriate and the OIC chose to file the attached Declaration of Assistant Attorney General Marta U. DeLeon. In her Declaration, Ms. DeLeon declares:

1. *I am an Assistant Attorney General with the Washington State Attorney General's Office. I am the lead attorney assigned to she has been the lead attorney assigned to advise and represent the Commissioner and the agency since February 2009.*
2. *During the time I have been lead counsel and before that time to my knowledge, the OIC has handled administrative hearings before the Insurance Commissioner through delegated OIC staff, with the approval of the Attorney General's Office.*

¹ By Order entered April 30, Licensees' Motion to Strike OIC's Response as Untimely Filed, and Licensees' Motion to Strike Declaration of Marta DeLeon as Irrelevant and Unsupported, were both denied. However, Licensees' arguments included in their Motion to Strike Declaration of Marta DeLeon as Irrelevant and Unsupported were also considered for purposes of deciding the Motion to Dismiss herein.

² Certain state agencies are exempt from this requirement, however the OIC is not among the exceptions. RCW 43.10.067.

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3. *Delegated OIC staff have the approval of the Attorney General's Office to handle this administrative hearing.*

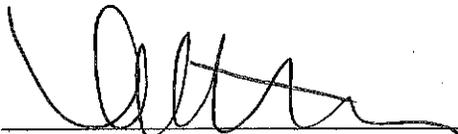
Therefore, just as in *Scarborough*, although at the outset of this proceeding there was a noticeable lack of input from the Attorney General on this issue - which was an important element in deciding this issue in 2000³ - the Assistant Attorney General who has been lead counsel to the Commissioner for four years now attests that delegated OIC staff, including OIC employee Philhower, have the approval of the Attorney General's Office to handle this proceeding. Further, absent any limitation in her Declaration, this approval implicitly contemplates that the Commissioner's delegated employee(s) will perform all of the activities they have customarily performed in representing the Commissioner's position in these hearings (including instituting the hearing itself by entering the Notice of Hearing). Assistant Attorney General DeLeon is an official legal representative of the Attorney General himself. Further, as the Licensees argue, under Washington Constitution Art. III Sec. 21 (and implemented by the various provisions of chapter 43.10 RCW cited by the parties) the Attorney General is *the legal adviser of the state officers*. The advice given in her Declaration - just like the Attorney General's advice given in the Attorney General's *amicus* brief in *Regence* in 2000⁴ - is advice upon which the Commissioner has the right to rely. Therefore, as this Declaration is worded, the Commissioner's delegated staff had the right to handle OIC adjudicative proceedings in past years and has the right to handle this instant proceeding now. Finally, while it is not entirely necessary, reference is made to the December 20, 2013 letter from Governor Jay Inslee cited in the decision in *Scarborough*, which recognizes the pertinent provisions of the Washington Constitution and statutes above, acknowledges that delegated agency staff do represent their agency heads in administrative proceedings in some agencies and situations and advises that this is acceptable if the agency has received the Attorney General's prior approval to do so.

Based upon the above consideration and analysis, it is hereby concluded that the Licensees' Request for Dismissal should be denied.

Based upon the above activity,

IT IS HEREBY ORDERED that Licensees' Request to Dismiss OIC's Request [for Hearing] is DENIED.

ENTERED AT TUMWATER, WASHINGTON, this 30th day of April, 2014, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

³ *In the Matter of Regence Blueshield*, G99-109 (2000).

⁴ *Id.*

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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: Eric P. Serna, Esq., Brian F. Kreger, Esq., Mike Kreidler, James T. Odiome, John F. Hamje, Esq., AnnaLisa Gellermann, Esq. and Andrea Philhower, Esq.

DATED this 30th day of April, 2014.


KELLY A. CAIRNS