

FILED

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of the Proposed Merger of:)	No. 14-0064
)	
VISION SERVICE PLAN (WASHINGTON),)	FINAL ORDER ON
A Washington Limited Healthcare Service)	APPLICATION FOR PROPOSED
Contractor,)	MERGER
)	
with and into)	
)	
MID-ATLANTIC VISION SERVICE PLAN,)	
INC., a Virginia Not-for Profit Optometric)	
Services Corporation.)	
)	

TO: Stuart Thompson, Deputy General Counsel
 Vision Service Plan
 3333 Quality Drive
 Rancho Cordova, CA 95670-7985

COPY TO: Mike Kreidler, Insurance Commissioner
 James T. Odiorne, J.D, CPA, Chief Deputy Insurance Commissioner
 William R. Michels, Deputy Commissioner, Company Supervision Div.
 Ronald J. Pastuch, Holding Company Manager, Company Supervision Div.
 AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
 Marcia Stickler, Staff Attorney, Legal Affairs Division
 Office of the Insurance Commissioner
 P.O. Box 40255
 Olympia, WA 98504-0255

NATURE OF PROCEEDING

Vision Service Plan (Washington) ("Applicant" or "VSP-WA") is a Washington non-stock nonprofit corporation. VSP-WA holds a Washington Certificate of Registration issued by the Washington State Insurance Commissioner, authorizing it to operate as a limited health care service contractor in Washington State, as defined in Chapter 48.44, RCW. Its core business is providing vision benefits coverage. Mid-Atlantic Vision Service Plan, Inc. ("Mid-Atlantic VSP"), an affiliate of VSP-WA, is a nonprofit company domiciled in Virginia. Mid-Atlantic VSP also holds a Washington Certificate of Registration issued by the Washington State Insurance Commissioner,

authorizing it to operate as a limited health care service contractor in Washington State. VSP-WA and Mid-Atlantic VSP (together, the "Applicants") propose to merge VSP-WA into Mid-Atlantic VSP, with Mid-Atlantic VSP being the surviving entity.

On November 27, 2013, VSP-WA and Mid-Atlantic VSP filed a Form A Statement Regarding the Merger with a Domestic Insurer with the OIC, requesting approval of its proposed merger. Subsequently, via various emails, the OIC advised the Applicants that additional information or action was required before the Form A Statement would be deemed complete. On February 10, 2014 and on March 26, 2014, the Applicants provided supplemental information, exhibits and attachments, and on March 28, 2014, the OIC determined that the Form A Statement contained all of the documents and information required to be included therein, and transmitted the Form A Statement to the Chief Presiding Officer. The hearing of this matter was held on May 9, 2014 before then Chief Presiding Officer Patricia D. Petersen. At the conclusion of said hearing, Chief Presiding Officer Petersen orally approved the application with conditions. The Commissioner has since delegated to the undersigned the responsibility to conclude the adjudicative proceeding herein by making the final written determination concerning the Applicants' proposed plan of merger.

All documents filed with VSP's application for approval of this proposed merger, and all supplemental documents and information referenced herein can be found at <http://www.insurance.wa.gov/laws-rules/administrative-hearings/judicial-proceedings/u-v/> or by contacting Kelly Cairns, Hearings Unit Paralegal, at (360) 725-7002 or KellyC@oic.wa.gov. These documents and materials include, among other documents, 1) VSP's Form A Statement Regarding the Acquisition of Control of a Domestic Health Carrier; 2) Agreement and Plan of Merger between VSP and Mid-Atlantic VSP; 3) organizational charts before and after the merger; 4) 2013 financial statements for VSP and Mid-Atlantic VSP; and 5) biographical affidavits of the officers and directors of the companies. The documents specified above, and others also included in VSP's filing, and all written communications between VSP and the Insurance Commissioner which were filed in this matter are published at the referenced website and were entered into evidence in this proceeding.

FINDINGS OF FACT

1. **Vision Service Plan (Washington)** is a Washington nonprofit corporation. It has been authorized by Washington as a limited health care service contractor since 1961 (Washington Certificate of Registration No. 139). The nature of VSP-WA's business operations is the selling and administering of vision care plans. VSP-WA is a subsidiary of Vision Service Plan (California), which is based in Rancho Cordova, California. VSP-WA's registered address is 600 University Street, Suite 2004, Seattle, WA 98101. Its mailing address is 3333 Quality Drive, Rancho Cordova, California 95670. [Exhibit 1, Application.]

2. Unrelated to the application filing but pertinent to this request for approval of the proposed merger, on November 8, 2012, VSP-WA entered into Consent Order No. 12-0153 with the OIC agreeing to pay a fine with a partial suspension of that fine and to fulfill certain obligations set forth in a compliance plan attached to the Consent Order. The Consent Order remains in effect until

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November 13, 2014. [Live and Written Testimony of Ronald, J. Pastuch, OIC Holdings Manager; Ex. 1, Consent Order.]

3. **Mid-Atlantic Vision Service Plan** is a Virginia nonprofit corporation. Mid-Atlantic VSP became registered as a limited health care service contractor in Washington in August 2013 (Washington Certificate of Registration No. 500886), which was a prerequisite to the merger. Mid-Atlantic VSP is also a subsidiary of Vision Service Plan (California). [Exhibit 1, Application.]

4. **Proposed Merger and Consideration to be Paid.** VSP-WA and Mid-Atlantic VSP propose the merger of VSP-WA with and into Mid-Atlantic VSP, with Mid-Atlantic VSP being the surviving entity. The proposed merger is between two affiliates of Vision Service Plan (California) and would involve no financial consideration. The proposed merger is one part of the plans of the holding company system to simplify its structure and manage fewer entities. [Exhibit 1, Application.]

5. **Result of Proposed Merger.** The Applicants' plan is for VSP-WA to be merged into Mid-Atlantic VSP, with Mid-Atlantic VSP becoming the surviving corporation, governed by the laws of the state of Virginia. The corporate identity, existence, purposes, powers, objects, franchises, rights and immunities of VSP-WA shall be wholly merged into Mid-Atlantic VSP and the separate existence of VSP-WA shall cease. All VSP-WA's assets and liabilities will be distributed to Mid-Atlantic VSP. The Applicants state that Mid-Atlantic VSP is a larger, better capitalized entity compared to VSP-WA. As the surviving entity, Mid-Atlantic VSP would take on the additional business, duties and obligations of VSP-WA, and all of VSP-WA's current contracts and members would become contracts and members of Mid-Atlantic VSP. The Applicants do not expect any change in operations, management or administration as a result of the merger. [Exhibit 1, Application.]

6. **Application of statutory criteria to approval of proposed merger.** On November 27, 2013, at least 60 days prior to its proposed date of merger, the Applicants filed their application with the OIC, requesting approval of the proposed merger of VSP-WA with and into Mid-Atlantic VSP. The proposed plan of merger was submitted to the OIC on February 10, 2014. [Exhibit 1, Application.]

7. I do not find that after the merger the surviving company would not be able to satisfy the requirements for registration as a health carrier. [Live and Written Testimony of Laura Olson, Director of Finance for VSP-WA and Mid-Atlantic VSP; Live and Written Testimony of Ronald J. Pastuch; Ex. 1, Application.]

8. I do not find that there is substantial evidence that the merger may substantially lessen competition or tend to create a monopoly in the health coverage business. [Live and Written Testimony of Laura Olson; Live and Written Testimony of Ronald J. Pastuch; Ex. 1, Application.]

9. I do not find that the financial condition of VSP-WA and/or Mid-Atlantic VSP is such as might jeopardize the financial stability of the health carrier, or prejudice the interest of its

subscribers. [Live and Written Testimony of Laura Olson; Ex. 1; Live and Written Testimony of Ronald J. Pastuch; Ex. 1, Application.]

10. The Applicants currently have no plans to declare an extraordinary dividend, to liquidate, to sell the assets, consolidate or merge with any other person, or to make any other material change in the business or corporate structure or management of the Applicants that would be unfair or unreasonable to the Applicant's subscribers and not in the public interest. [Live and Written Testimony of Laura Olson; Live and Written Testimony of Ronald J. Pastuch; Ex. 1, Application.]

11. The competence, experience, and integrity of those persons who would control the operation of the health carrier are not such that it would not be in the interest of subscribers of the health carrier and of the public to permit the merger or other acquisition of control. [Live and Written Testimony of Laura Olson; Live and Written Testimony of Ronald J. Pastuch; Ex. 1, Application.]

12. The merger is not likely to be hazardous or prejudicial to the insurance-buying public. [Live and Written Testimony of Laura Olson; Live and Written Testimony of Pastuch; Ex. 1, Application.]

13. On April 17, 2014, Chief Presiding Officer Petersen entered the Notice of Hearing summarizing this proposed transaction, informing the parties and the public that the hearing herein would take place on May 9, 2014 at the hour of 10:00 a.m., and advising that any interested party could participate in the hearing. [Ex. 1, Notice of Hearing.] The OIC published this Notice of Hearing on the Insurance Commissioner's website on April 17, 2014. Said Notice remained published on the OIC's website until the time of the hearing. [Live and Written Testimony of Pastuch; Ex. A.] By these means, reasonable notice was given to the public.

14. No objections to the proposed merger were received by OIC, VSP-WA, Mid-Atlantic VSP or the Hearings Unit. [Live and Written Testimony of Laura Olson; Live and Written Testimony of Ronald J. Pastuch]

15. The Applicants' proposed merger, as described above and under the terms and conditions set forth in the documents included in its Application filed herein, is fair, equitable, consistent with law, and no reasonable objection to the proposed merger exists.

16. No evidence was offered that any director, officer, member or subscriber of the Applicants has received or will receive a fee, commission or other compensation or valuable consideration for aiding, promoting or assisting in the merger or consolidation, except as is expressly provided by the plan of merger or consolidation. [Live and Written Testimony of Pastuch; Ex. A.]

17. The proposed merger shall in other respects be governed by the general laws of this state relating to business corporations. [Live and Written Testimony of Pastuch; Ex. A.]

18. Laura Olson, Director of Finance Division for Vision Service Plans (Washington) and Mid-Atlantic Vision Service Plans, Inc., testified on behalf of the companies. Judge Petersen determined

that Ms. Olson presented her testimony in a clear, detailed and credible manner and exhibited no apparent biases.

19. Ronald J. Pastuch, Holding Company Manager in the Company Supervision Division of the Office of the Insurance Commissioner, testified on behalf of the OIC. Judge Petersen determined that Mr. Pastuch presented his testimony in a clear, detailed and credible manner and exhibited no apparent biases.

20. Based on its analysis of the proposed acquisition in light of the statutory standards described above, the Commissioner has recommended approval of the proposed acquisition at issue in this hearing subject to the following conditions:

a. Mid-Atlantic VSP and VSP-WA must submit the final documents pertaining to the plan of merger, merger agreement and board resolutions regarding the plan of merger and merger agreement subject to this filing and to effectuate the merger to the OIC.

b. Subject to the provisions of Consent Order #12-0153, Mid-Atlantic VSP must be subject to the same conditions imposed on VSP-WA and comply with those similar conditions through and up to the expiration date of that order.

[Live and Written Testimony of Pastuch.]

21. Based upon the above Findings of Facts, no basis for denial of the VSP-WA's and Mid-Atlantic VSP's request for approval of the proposed merger of VSP-WA with and into Mid-Atlantic VSP exists, and it is reasonable that this proposed merger should be approved, subject to the conditions proposed by the OIC.

CONCLUSIONS OF LAW

1. The hearing herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. Pursuant to Title 48 RCW, specifically RCW 48.31.010 and RCW 48.31C, the Washington State Insurance Commissioner has jurisdiction over the proposed merger of Vision Service Plan (Washington) with and into Mid-Atlantic Vision Service Plan, Inc. Further, authority to conduct the adjudicative proceeding in this matter was properly delegated to the Chief Presiding Officer to review and consider all documents and evidence presented at hearing, and subsequently, the undersigned, Judge George Finkle (ret.), has been properly delegated the authority to make the final written determination herein.

2. Pursuant to RCW 48.31C.030, VSP-WA and Mid-Atlantic VSP filed the application requesting approval of the proposed merger at least sixty days before the proposed consummation of the merger. As contemplated therein, the OIC staff properly determined that the application was complete and transferred the file to the Chief Presiding Officer with the request that an adjudicative proceeding be held to hear evidence and make the final decision in this matter.

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3. Pursuant to RCW 48.31C.030(5)(a), the commissioner shall approve a merger involving a domestic health carrier *unless*, after a public hearing, he or she finds: (i) After the change of control, the domestic carrier would not be able to satisfy the requirements for registration as a health carrier; (ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency have chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition may substantially lessen competition or tend to create a monopoly in the health coverage business.

Pursuant to RCW 48.31C.030(5)(a)(ii)(B), the commissioner may not disapprove the acquisition if the commissioner finds that (I) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from more competition; or (II) The acquisition will substantially increase or will prevent significant deterioration in the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition.

Pursuant to RCW 48.31C.030(5)(a)(ii)(C), the commissioner may condition the approval of the acquisition on the removal of the basis of disapproval, as follows, within a specified period of time: (I) The financial condition of an acquiring party is such as might jeopardize the financial stability of the health carrier, or prejudice the interest of its subscribers; (II) The plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to subscribers of the health carrier and not in the public interest; (III) The competence, experience, and integrity of those persons who would control the operation of the health carrier are such that it would not be in the interest of subscribers of the health carrier and of the public to permit the merger or other acquisition of control; or (IV) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

4. Based on Finding of Fact No. 7 above, after the merger of VSP-WA and Mid-Atlantic VSP, the surviving entity will be able to continue to satisfy the requirements of a health carrier as contemplated by RCW 48.31C.030(5)(a)(i).

5. Based on Finding of Fact No. 8 above, the effect of the merger will not substantially lessen competition or tend to create a monopoly in the health coverage business.

6. Based on Finding of Fact No. 9 above, the financial condition of the Applicants is not such as might, after completion of the proposed acquisition of control, jeopardize the financial stability of the Applicants or prejudice the interests of its subscribers as contemplated by RCW 48.31C.030(5)(a)(ii)(C)(I).

7. Based on Finding of Fact No. 10 above, the Applicants have no current plans to declare an extraordinary dividend, to liquidate, or to sell the assets, consolidate or merge with any other person

or persons or to make any other material changes to the business or corporate structure or management of the surviving entity that are unfair or unreasonable to the Applicants' subscribers, or not in the public interest, as contemplated by RCW 48.31C.030(5)(a)(ii)(C)(II).

8. Based on Finding of Fact No. 11 above, the competence, experience and integrity of those persons who will control the operation of the surviving entity after the proposed acquisition or merger are not such that would not be in the interest of subscribers of the Applicants or of the public to permit the merger, as contemplated by RCW 48.31C.030(5)(a)(ii)(C)(III).

9. Based on Finding of Fact No. 12 above, the merger of VSP-WA with and into Mid-Atlantic VSP is not likely to be hazardous or prejudicial to the insurance-buying public, as contemplated by RCW 48.31C.030(5)(a)(ii)(C)(IV).

10. Based on Findings of Fact Nos. 13 and 14, reasonable notice of this proposed acquisition was given to the public.

11. The proposed merger satisfies the requirements of RCW 48.31.010. The proposed merger is fair, equitable, consistent with law, and no reasonable objection to the merger exists.

12. The Applicants shall file a finalized plan of merger with the OIC, which shall include the Articles of Merger, board resolutions and board approvals of the plan or merger, in accordance with RCW 48.31.010. The following condition on the approval of the proposed merger is reasonable and will be imposed:

Mid-Atlantic VSP and VSP-WA shall file with the OIC a copy of all final documents pertaining to the plan of merger, merger agreement and board resolutions regarding the plan of merger and merger agreement which are necessary to effectuate the merger.

13. Based on Findings of Fact Nos. 2 and 20, the following condition on the approval of the proposed merger is reasonable and will be imposed:

Subject to the provisions of Consent Order #12-0153, Mid-Atlantic VSP shall be subject to all the terms and conditions imposed on VSP-WA and comply with those same conditions through and up to the expiration date of that order.

14. The provisions of the Insurance Code of the State of Washington, Chapter 48.31C RCW, specifically RCW 48.31C.030, have been met and support the approval of this proposed merger.

ORDER

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Vision Service Plan (Washington) and Mid-Atlantic Vision Service Plan, Inc.'s request for approval of the proposed merger of Vision Service Plan (Washington) with and into Mid-Atlantic Vision Service Plan, Inc., under the terms of the Agreement and Plan of Merger of VSP-WA and Mid-Atlantic VSP, other documents pertinent to this transaction which were filed herein, and specific testimony presented at hearing, is approved, subject to the following conditions:

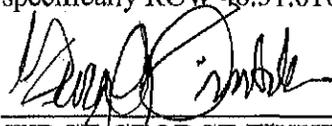
1. Mid-Atlantic VSP and VSP-WA shall file with the OIC a copy of all final documents pertaining to the plan of merger, merger agreement and board resolutions regarding the plan of merger and merger agreement which are necessary to effectuate the merger;

2. Mid-Atlantic VSP shall be subject to all terms and conditions imposed on VSP-WA pursuant to Consent Order #12-0153, and shall comply with such terms and conditions through and up to the expiration date of that order.

The present Final Order confirms the oral Order entered by then Chief Presiding Officer Patricia D. Petersen on May 9, 2014, at the close of the adjudicative proceeding held May 9, 2014, which granted immediate approval of the proposed merger, subject to the conditions set forth above.

NOW, THEREFORE, IT IS FURTHER ORDERED that approval of this proposed merger is granted effective May 9, 2014.

ENTERED at Seattle, Washington, this 9th day of June, 2014, pursuant to Title 48 RCW and specifically RCW 48.31.010 and 48.31C.030, Title 34 RCW, and regulations applicable thereto.



JUDGE GEORGE FINKLE (Ret.)
Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

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: Stuart Thompson, Esq., Mike Kreidler, James T. Odiorne, William R. Michels, Ronald J. Pastuch, AnnaLisa Gellermann, Esq. and Marcia G. Stickler, Esq.

DATED this 10th day of June, 2014.


KELLY A. CAIRNS