

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

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OFFICE OF
INSURANCE COMMISSIONER

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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 of a true copy of this document to parties listed below.
DATED this 18th day of April 2008 at Tumwater, Washington.

Signed: Wendy Galloway

HEARINGS UNIT
Fax: (360) 664-2782

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Wendy Galloway
Paralegal
(360) 725-7002
Wendyg@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:)
)
DESIGN SAVERS PLAN, STEVEN D.)
SMITH, INC., STEVEN D. SMITH,)
DESIGN BENEFITS, INC.,)
DENTAL BY DESIGN, DESIGN)
TELESERVICES, INC., SDS FINANCIAL,)
JOHN BYARS, ADOVAHEALTH, IRA)
GOTTLIEB, FAMILY SECURITY)
COUNCIL, INC., NEW HEALTH CARE)
MANAGEMENT GROUP, INC.,)
C. MURPHY LEOPOLD, EDWARD)
DEMMING, ROBERT D. EDELHEIT,)
UNITED GROUP PROGRAMS, INC., E2)
HOLDING, INC., WAR COLLEGE)
SIMULATIONS, INC., UNITED)
PROGRAMS WORLDWIDE, INC.,)
UNITED NATIONAL WORKFORCE)
ASSOCIATION, INC., OPTI-MED,)
ARNOLD H. KATZ, and JONATHAN)
EDELHEIT,)

DOCKET NO. D07-0351

ORDER ON MOTION OF
ROBERT D. EDELHEIT (LICENSEE) TO
TRANSFER TO OFFICE OF
ADMINISTRATIVE HEARINGS
OR IN THE ALTERNATIVE
FOR A STAY

Unauthorized Insurers.)

TO: Robert D. Edelheit
2500 N. Military Trl., Ste. 450
Boca Raton, Florida 33431-6353

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Michael Madden, Esquire
Bennett Bigelow & Leedom, PS
1700 Seventh Avenue, Suite 1900
Seattle, Washington 98102

COPY TO: Mike Kreidler, Insurance Commissioner
Vernon Stoner, Chief Deputy Insurance Commissioner
James T. Odiome, Deputy Commissioner, Consumer Protection
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Thomas P. Rowland, Staff Attorney, Legal Affairs Division
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On December 18, 2007, the Insurance Commissioner (OIC) entered an Order to Cease and Desist against the above-captioned Respondents and served said Order upon these Respondents on various dates beginning on December 18, 2007, as specified by Affidavits of Mailing included in the hearing file.

In response, various Respondents timely filed their requests for hearing to contest said Order. Among the others, on January 29, 2008, Licensee, Robert D. Edelheit, (not including another Respondent, Jonathan Edelheit), United Group Programs, Inc., and Opti-Med, by and through Michael Madden, Esq., filed their request for hearing. Pursuant to RCW 48.04.020(1), the Order to Cease and Desist became effective immediately upon entry (December 18, 2007) and remains in place against Robert D. Edelheit, United Group Programs, Inc., and Opti-Med, and all other Respondents, until final order on hearing is entered.

On February 20, 2008, the undersigned held the first prehearing conference in this matter, which included all Respondents who had by that time filed their requests for hearing.

On February 27, 2008, Edelheit, by and through Michael Madden, Esquire of Seattle, filed a Licensee's Motion to Transfer to Office of Administrative Hearings or in the Alternative for a Stay, citing RCW 48.04.010(5). In his Motion, Edelheit asserts, briefly, the following: 1) On December 18, 2007, the OIC entered an Order Revoking License (No. D07-0352) against Edelheit, which revokes his nonresident insurance agent's license in Washington. In response, on January 3, 2008, he filed a Request for Hearing to contest said Order Revoking License, which was received by the undersigned. At Edelheit's request, the appeal of the OIC's Order Revoking License was transferred to the Office of Administrative Proceedings (OAH) for an initial decision (i.e. recommended) pursuant to RCW 48.04.040(5) and Title 34 RCW; 2) The instant Order to Cease and Desist in this separate matter (No. D07-0351) addresses matters that are moot with respect to Edelheit because the activities in question ceased as of April 2007 and the OIC staff is aware that he has terminated all relationship with both of the carriers in question and with the persons/entities who were accused of making illegal sales; and 3) that the outcome of the

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revocation hearing would in all likelihood eliminate the need for a hearing on the Order to Cease and Desist with respect to Edelheit and his companies, United Group Programs, Inc., and Opti-Med.

I. With regard to Edelheit's request to have his individual appeal in this instant matter (Order to Cease and Desist, No. D07-0351) referred to OAH for an initial decision, this motion is granted, pursuant to RCW 48.04.010(5). Contrary to the assertion of Edelheit through Mr. Madden, the OIC Hearings Unit will not refuse to transfer Edelheit's request to transfer this second appeal, on behalf of himself as a Licensee, to the OAH for an initial decision (i.e. recommended) pursuant to RCW 48.04.010(5) and Title 34 RCW. As is the proper procedure relative to the OIC as an agency and others where the OAH is an option in some circumstances, when an initial decision is entered by OAH, that decision and the hearing file will be returned to the Hearings Unit where it will be reviewed, receive oral and/or written arguments as necessary or requested, and a final decision will be entered by the Review Judge. Instead, Mr. Madden was advised that no Respondents, except Edelheit, have requested that their appeals be transferred to OAH. Indeed, because no other Respondents are "licensees" within the meaning of RCW 48.04.010(5) they are also not entitled to the two step process of first procuring an initial decision from OAH.

Further, Mr. Madden was advised that because the primary issue involved in the instant proceeding is whether the Respondents are unauthorized entities, and because it appears that the OIC's Order Revoking License entered against Edelheit includes a central issue of whether the products which he was selling – which are the products of the Respondents herein – are unauthorized, it would be more efficient for Edelheit to either wait to pursue his appeal before OAH until the instant case is decided, or to have both his appeals in these matters decided in the more common single step process in this forum.

However, if Edelheit remains committed to first seek an initial decision from OAH with regard to his revocation hearing (No. D07-0352) and/or remains committed to first seek an initial decision from OAH with regard to the instant case (D07-0351) as it relates to himself as an individual licensee only, this will be his choice. As was explained to Mr. Madden during the first prehearing conference referenced above, in the exercise of his rights, here under RCW 48.04.040(5), Edelheit will encounter a less efficient, more expensive and more duplicative process because all other Respondents - including United Group Programs, Inc. and Opti-Med which are also represented by Mr. Madden - will have their appeals heard in this forum beginning at the present time: no other Respondents aside from Edelheit have, or are they entitled to under RCW 48.04.040(5), requested an initial decision from OAH. However, this is a choice which Edelheit will need to make. It is neither reasonable, fair, justifiable, or in accordance with Title 34 RCW, to either require or allow the other Respondents in this matter from proceeding with their appeals at this time, possibly providing them with the reprieve they seek, just because Edelheit – only one of 23 Respondents – chooses to first obtain an initial decision from OAH as to himself alone.

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II. Edelheit's second basis for his Motion is that the issues involved in the Order to Cease and Desist are moot with respect to himself, because *the activities in question ceased as of April 2007.....[and] Mr. Edelheit has terminated all relationships with both the carriers in question and with the persons/entities who were accused of making illegal sales. ... Mr. Edelheit was nevertheless compelled to demand a hearing on the C&D Order because of a concern that the OIC staff will assert that he is estopped from challenging the Revocation Order if he fails to challenge the C&D and because of the potential impact of that Order on his licenses in other states.* If this is the case, then facts supporting this position must be presented and upheld at hearing - either in this forum or before OAH if Licensee Edelheit chooses that forum from which to first seek an initial decision. Edelheit is cautioned, however, to remain aware that if his relationship with the other Respondents is at issue herein as he alleges, his participation in this instant proceeding which is commencing now in this forum – and will include all other Respondents which have requested a hearing, including his companies United Group Programs, Inc. and Opti-Med – would appear to be prudent.

III. Licensee Edelheit's third basis for his Motion is that the outcome of the revocation proceeding against him will likely eliminate the need for a hearing on the Order to Cease and Desist with respect to Robert D. Edelheit or his companies, United Group Programs, Inc. and Opti-Med. This argument is without merit. Neither United Group Programs, Inc. or Opti-Med are "licensees" under the meaning of RCW 48.04.040(5) and, therefore, are not parties to any hearing before OAH. The proceeding which includes all other Respondents which have requested a hearing in this matter-including Edelheit's companies, United Group Programs, Inc. and Opti-Med (and Edelheit if he chooses not to exercise his right to first obtain an initial opinion from OAH) - will commence in this forum and at this time.

IV. Finally, while in the instant Motion, Edelheit indicates that he is moving, as an alternative to transfer to OAH, for a stay of adjudicative proceeding on the Order to Cease and Desist, his Motion actually advises that he *will agree to a stay of proceedings with regard to the C&D Order, without prejudice to his right to seek a transfer to the OAH, pending the outcome of the hearing on the Revocation Order.* While, again, should Edelheit exercise his right as a Licensee to have his individual appeal regarding the Order Revoking License heard first before OAH and/or his individual appeal regarding the Order to Cease and Desist heard first before OAH, he will experience some lack of efficiency including duplicative work, time and expense in some areas. However, this instant proceeding concerning Respondents' appeals of the OIC's Order to Cease and Desist includes 22 other entities besides just Edelheit. The appeal of the other Respondents, including United Group Programs and Opti-Med, concerning the OIC's Order to Cease and Desist will proceed before the Presiding Officer in this forum and at this time, either with Licensee or without him if he chooses to first appear before OAH in this instant matter. As above, it is neither reasonable, fair, justifiable, or in accordance with Title 34 RCW, to either require or allow the other Respondents in this matter from proceeding with their appeals at this time, possibly providing them with the reprieve they seek, just because Edelheit – only one of 23 Respondents – chooses to first obtain an

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initial decision from OAH before review, possible additional argument, and final decision is entered in this forum.

If Edelheit chooses to seek an initial decision from OAH, then review of the initial OAH order, possibly oral argument from the parties, and final decision as to Licensee Robert D. Edelheit alone must necessarily take place at a later date in this forum.

ORDER

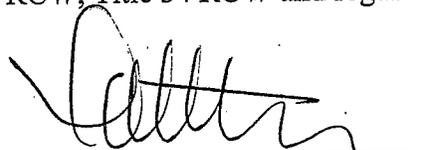
Based upon a careful consideration of the Licensee's Motion to Transfer to OAH or in the Alternative for a Stay, and for the reasons stated above,

IT IS HEREBY ORDERED that Licensee Robert D. Edelheit's Motion to Transfer his individual appeal first to OAH for an initial decision is **GRANTED** should he wish to exercise that right;

IT IS FURTHER ORDERED that Licensee Robert D. Edelheit's Motion for Stay of Docket No. D07-0351 (the Order to Cease and Desist), which includes 23 Respondents (including United Group Programs, Inc. and Opti-Med) is **DENIED**.

IT IS FURTHER ORDERED that Licensee Robert D. Edelheit is asked to respond to the Hearings Unit within 10 days of the date of this Order to confirm whether he wishes to have his individual appeal in this instant matter transferred to OAH for an initial decision. Regardless of his decision on this procedural point, the appeal of all other Respondents who have filed their requests for hearing, including but not limited to United Group Programs, Inc. and Opti-Med, shall proceed forthwith. Further, regardless of which procedural choice Edelheit makes, pursuant to RCW 48.04.020(1), the Order to Cease and Desist became effective immediately upon entry (December 18, 2007) and will remain in place against Robert D. Edelheit, United Group Programs, Inc., and Opti-Med, and all other Respondents, until final order on hearing is entered.

Entered this 18th day of April, 2008, at Tumwater, Washington, pursuant to Title 48 RCW, Title 34 RCW and regulations pursuant thereto.



PATRICIA D. PETERSEN
Chief Hearing Officer