

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

ALIERA HEALTHCARE INC.,

Appellant.

Docket No. 19-0251

**ORDER GRANTING OIC'S
MOTION TO COMPEL
DISCOVERY**

I. BACKGROUND

On March 12, 2020, Kim Tocco, Insurance Enforcement Specialist at the Office of the Insurance Commissioner (“OIC”) filed the OIC’s Motion to Compel Discovery on March 12, 2020, which alleged Alieria Healthcare, Inc. (“Alieria”) failed to provide documents listed in the “OIC’s First Request for Production to Alieria Healthcare, Inc.” Eric Neiman and Ethan Smith, counsel for Alieria, filed a response on March 26, 2020 (Alieria Healthcare, Inc.’s Response to OIC’s Motion to Compel Discovery), and attached to it “Alieria’s First Supplemental and Amended Response to OIC’s First Request for Production” and provided to OIC supplemental records and additional information responsive to several of OIC’s requests for production.

Both parties were present for a hearing regarding discovery on March 30, 2020. Darryl Colman, Insurance Enforcement Specialist for OIC presented OIC’s position, and Ethan Smith presented Alieria’s position.

II. ISSUES

Whether Alieria should produce documents responsive to OIC’s Request for Production No. 7 and Request for Production No. 13?

III. RULING

It is ordered that Alieria should respond to the OIC’s Request for Production No. 7 and Request for Production No. 13 by providing the documents listed, as outlined below.

IV. ANALYSIS

Whether or not Alieria must produce the requested materials is governed by the discovery process applicable to hearings held at the OIC. Under WAC 284-02-070(2)(e)

the OIC has made “available in adjudicative proceedings pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).” CR 26(b)(1) allows for discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” As long as the requested information is “reasonably calculated to lead to the discovery of admissible evidence” it is discoverable. *Id.*

CR 26(b)(1) goes onto provide that:

[t]he “frequency or extent of use of the discovery methods....shall be limited by the court if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties, resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

CR 26(c) allows for courts to “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including that discovery not be had, or restricting the method and scope in various ways.

Courts have interpreted “a broad right of discovery which is subject to the relatively narrow restrictions of CR 26(c).” *Lowy v. PeaceHealth*, 174 Wn.2d 769, 776, 280 P.3d 1078, 1082 (2012). “The only limitation is relevancy to the subject matter involved in the action, not to the precise issues framed by the pleadings; and inquiry as to any matter which is or may become relevant to the subject matter of the action should be allowed, subject only to the objection of privilege. *Bushman v. New Holland Div. of Sperry Rand Corp.*, 83 Wn.2d 429, 434, 518 P.2d 1078, 1081 (1974).

Request for Production No. 7

Request for Production No. 7 asked Alera to “[p]rovide copies of all complaints, grievances, or appeals received by Alera from all Washington enrollees identified in response to No. 4 above.”

Aliera argued that this request was not relevant to any of the OIC's allegations in the Cease and Desist Order No. 19-0251. But, as noted above, the precise issues framed in pleadings do not serve to limit discovery. Rather, discovery of "any matter which is or may become relevant to the subject matter of the action" should be allowed.

It is conceivable that review of complaints, grievances, and appeals (hereinafter referred to as "complaints" for ease of reference) is likely to lead to evidence of how Aliera did business. Payment of submitted claims, timing of payments, totality of payment, denial of payment for health care procedures an enrollee understood would be "covered" or reimbursed, and more, if the subject of complaints, may lead to evidence establishing whether Aliera acted as the OIC has alleged. The subject matter of this proceeding includes whether Aliera has been "engaging in or transacting the unauthorized business of insurance or acting as an unregistered health care service contractor or as an unlicensed discount plan organization in the state of Washington" and the request for enrollee complaints is reasonably calculated to do so. *See Order to Cease and Desist*, No. 19-0251, letter A., p.1.

Further, since creating a spreadsheet would necessarily still involve review of all complaints to determine whether they were based on misrepresentations made at the point of sale (as Aliera requested should a response to No. 7 be ordered), this request would not alleviate the burden of responding. The burden of responding here is not "undue." While it may take time and resources to collect the information, the potential value of the information outweighs that burden.

Aliera must respond to OIC's Request for Production No. 7, and produce the requested documents **no later than April 17, 2020**, close of business.

Request for Production No. 13

Regarding Request for Production No. 13, OIC sought to have Aliera provide "[c]opies of all contracts or other agreements between the Aliera entities and First Choice Health Network, and any other preferred provider network, whose providers have provided health care services to the enrollees identified in No. 4 above."

Aliera's amended response stated:

Aliera has not entered into any contract or agreement with First Choice Health Network. No services have been provided to Washington enrollees pursuant to any contract between Aliera and a preferred provider network. The provider networks utilized by Washington enrollees were accessed through Healthscope Benefits, which contracted with Multiplan (PHCS) and First Health. Aliera contracted with Healthscope Benefits. While Aliera does have agreements with Multiplan (PHCS) and First Health, no services have ever been provided to Washington enrollees pursuant to those contracts.

Aliera's response indicates that contracts and/or agreements exist. While they state no services have been provided "pursuant to those contracts," Request for Production No. 13 was not limited in that manner. Aliera should respond and provide the requested contracts they have identified in their response, **no later than April 17, 2020**, close of business.

V. ORDER

Thus, IT IS ORDERED:

Aliera should respond and provide the documents requested in the Office of the Insurance Commissioner's Request for Production No. 7 and Request for Production No. 13, **no later than April 17, 2020**, close of business.

DATED: April 3, 2020



Julia Eisentrout
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Order Granting OIC's Motion to Compel on the following people at their addresses listed below:

Counsel for Appellant:

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Dated this 3rd day of April, 2020, in Tumwater, Washington.

/s/ Rebekah Carter

Rebekah Carter
Paralegal
Hearings Unit