HEARINGS UNIT
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of	)	**Docket No. 15-0183**
	)	
COMFORT DENTAL GOLD PLAN, LLC,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER**
	)	
Unauthorized Entity.	)	
	)	

TO: Brent E. Haden, Attorney at Law
The Law Firm of Haden & Haden
827 East Broadway
Columbia, MO 65201

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Marcia Stickler, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
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On January 21, 2016, this matter came before me in Tumwater, Washington, for evidentiary hearing, pursuant to the Amended Notice of Hearing, filed December 8, 2015. Marcia Stickler, Attorney at Law, Insurance Enforcement Specialist, Legal Affairs Division, appeared on behalf of the Office of the Insurance Commissioner ("OIC"). Brent E. Haden, Attorney at Law, of the Law Firm of Haden & Haden, appeared on behalf of Comfort Dental Gold Plan, LLC ("CDGP").

I have considered the exhibits admitted into evidence, the stipulated facts, and the arguments of the parties, including post-hearing submissions.

FINDINGS OF FACT

1. CDGP has some common ownership with Comfort Dental Group, Inc. (Corporation). Both CDGP and Corporation are headquartered in Colorado at the same address. Corporation is a franchisor that sells franchises to dental clinics (i.e., Comfort Dental clinics) operating in various states, including Washington.

2. CDGP works closely with franchisee dental clinics in Washington and elsewhere to offer patients of those clinics a reduced-fee dental membership plan (either Gold, Silver, or Diamond) that allows individuals and families to receive dental services at reduced prices. Exhibit 2. The Gold Plan is designed for individuals and families, while the Silver and Diamond Plans are designed for groups of five or more, and fifty or more, respectively. *Id.* The monthly membership fee for the Gold Plan is $10.50 for an individual, $17.50 for a member and one dependent, $24.50 for a member and up to three dependents, and $29.50 for a member and four or more dependents. *Id.* Members can also pay the membership fee on an annual basis. *Id.*; Stipulated Facts, ¶ 3. The Gold Plan brochure states that potential members should direct their enrollment form and payment for the Gold Plan to "Comfort Dental Gold Plan" at a Colorado address. *Id.* Members also have the option of paying via bank draft or charge card. *Id.*

3. The brochure for the Gold Plan specifically states that the discount program CDGP offers patients of Comfort Dental franchisees is not an insurance policy that pays providers of dental services, but rather provides an opportunity for discounts on such services, and states:

> This discount program is NOT a health insurance policy and does not make payments directly to dental service providers. Members are obligated to pay for all dental services, but may receive discounts on dental services from participating providers and the discount range will vary depending on provider type and dental services received.

Exhibit 2.

4. Over a three year period, while unlicensed in Washington, CDGP sold 2,595 memberships to patients of Comfort Dental clinics located in Washington.

5. The OIC's Consumer Protection Division subsequently received an inquiry from a current member of the Gold Plan residing in Washington. Stipulated Facts, ¶ 2. The member requested information on why the OIC was preventing him from renewing his membership in the Gold Plan at a Comfort Dental clinic in Washington. *Id.* The consumer was displeased with the OIC preventing the Gold Plan from being sold in Washington, since he desired to renew his membership. *Id.* at ¶ 3.

6. When OIC then contacted CDGP to learn about the Gold Plan, CDGP indicated to the OIC that it was unaware that it had to be licensed in Washington to sell such plans. Stipulated Facts, ¶ 4. After determining that it could not obtain a license under RCW Ch. 48.155 to operate a discount plan business under its business model, on August 29, 2014, CDGP ceased operations in Washington. *Id.*

7. The OIC has never received complaints from any Washington consumer or patient about the services CDGP provided under its Gold Plan or other plans. Stipulated Facts, ¶ 6.

8. On August 11, 2015, Marcia Stickler, Attorney at Law, Insurance Enforcement Specialist with the OIC's Legal Affairs Division sent a Consent Order Levying A Fine, No. 15-0183 ("Order"), to CDGP, proposing imposition of a fine of $5,000 against CDGP, in lieu of other administrative action, for selling medical discount plans without a license in violation of Washington law. The Order was pursuant to RCW 48.155.020 and RCW 48.155.130(1)(b).

9. In a letter dated November 9, 2015, Brent Haden, legal counsel for CDGP, filed a Demand for Hearing on the proposed imposition of a fine ("Demand") on behalf of CDGP, arguing that CDGP did not violate Washington law, and if it did so, the proposed fine is unfair and disproportionate relative to CDGP's alleged conduct. Further CDGP alleges if it did violate Washington law, it did so in ignorance. CDGP argues that at no time did it ever defraud or injure one of its customers, and that it acted in good faith to provide a legitimate product to the citizens of Washington.

CONCLUSIONS OF LAW

1. This adjudicative proceeding was properly convened, and all substantive and procedural requirements under the laws of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW, specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

2. RCW Ch. 48.155 is known as the Washington health care discount plan organization act ("Act"). RCW 48.155.001.

3. RCW 48.155.003 states that the purpose of the Act is "to promote the public interest by establishing standards for discount plan organizations, to protect consumers from unfair or deceptive marketing, sales, or enrollment practices, and to facilitate consumer understanding of the role and function of discount plan organizations in providing discounts on charges for health care services."[1]

4. A look at the legislative history of Substitute Senate Bill ("SSB") 5480, effective July 26, 2009, which created RCW Ch. 48.155, states that the driving force behind that legislation was consumer protection. The Final Bill Report for SSB 5480 states in part:

> The discount plans are not insurance products, but many consumers have been confused by the product marketing, as evidenced by increasing consumer complaints to the Office

[1] RCW 48.155.010 states that "health care service" has the same meaning in RCW 48.43.005(17). However, "health care service" is now defined in RCW 48.43.005(24) in part as "that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease." (Emphasis added). RCW 48.43.005(23) defines "health care provider" in part as "(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law;" Dentists are regulated under RCW Title 18.

> of Insurance Commissioner (OIC). The discount health plans are currently unregulated and have no disclosure or marketing standards to ensure consumer protection.

Additionally, the Senate Bill Report for SSB 5480, and in particular the staff summary of public testimony therein, provides more detail on the number of complaints received by OIC up to that point, and explains that the language of the Bill has its origin in a National Association of Insurance Commissioners ("NAIC") model law, and states:

> This bill has been in the works for several years and stems from a constituent complaint we received and asked the OIC to follow up on. The OIC could not intervene or respond to the misleading marketing in any way. No one regulates or oversees these products today. The OIC has received over 400 complaints about these products and believes this to be the tip of the iceberg. The bill is based on a model from the NAIC that 33 states have in place to ensure consumer protection. The underwriters that market true products are professionals that have completed training and licensing and remain accountable for the products they sell. The companies marketing these discounts are not following the same standards and consumers are being misled. Reputable discount plans have been offered for 20 years and many states have put good standards in place to ensure consumer protections. There are fraudulent actors selling these products now and those of us with legitimate products support licensing and regulatory standards that will help clean up the business and chase out the bad actors.

(Emphasis added).[2]

5. RCW 48.155.020(1) states: "Before conducting discount plan business to which this chapter applies, a person must obtain a license from the commissioner to operate as a discount plan organization."

6. RCW 48.155.015(1) states: "This chapter applies to all discount plans and all discount plan organizations doing business in or from this state or that affect subjects located wholly or in part or to be performed within this state, and all persons having to do with this business."

7. RCW 48.155.010 defines the terms "discount plan," and "discount plan organization," as follows:

> (4)(a) "Discount plan" means a business arrangement or contract in which a person or organization, in exchange for fees, dues, charges, or other consideration, provides or purports to provide discounts to its members on charges by providers for health care services.

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[2] The NAIC model law referred to in this legislative history is the Discount Medical Plan Organization Model Act (MDL-98), which the NAIC adopted in 2006.

(b) "Discount plan" does not include:

(i) A plan that does not charge a membership or other fee to use the plan's discount card;

(ii) A patient access program as defined in this chapter;

(iii) A medicare prescription drug plan as defined in this chapter; or

(iv) A discount plan offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(5)(a) "Discount plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides or purports to provide access to discounts to its members on charges by providers for health care services. "Discount plan organization" also means a person or organization that contracts with providers, provider networks, or other discount plan organizations to offer discounts on health care services to its members. This term also includes all persons that determine the charge to or other consideration paid by members.

(b) "Discount plan organization" does not mean:

(i) Pharmacy benefit managers;

(ii) Health care provider networks, when the network's only involvement in discount plans is contracting with the plan to provide discounts to the plan's members;

(iii) Marketers who market the discount plans of discount plan organizations which are licensed under this chapter as long as all written communications of the marketer in connection with a discount plan clearly identify the licensed discount plan organization as the responsible entity; or

(iv) Health carriers, if the discount on health care services is offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

8. Clearly CDGP enters into a business arrangement or contract with patients of Comfort Dental clinics located in Washington (i.e., members), whereby in exchange for monthly or annual membership fees, dues, charges, or other consideration, it provides or purports to provide discounts to its members on charges by such providers for dental services. Per the definition in RCW 48.155.010(4)(a), this represents a "discount plan." CDGP's own brochure refers to its business arrangement with customers as a "discount program". Exhibit 2. By the same token, CDGP is also a "discount plan organization" as defined in RCW 48.155.010(5)(a). CDGP makes no argument that the exclusions from both "discount plan" and "discount plan organization," in RCW 48.155.010(4)(b) or RCW 48.155.010(5)(b) respectively, are applicable. And I conclude that no such exclusion applies. Therefore, CDGP's membership plans (including its Gold Plan) are discount plans governed by RCW Ch. 48.155. CDGP violated RCW 48.155.020(1) by selling discount plans to patients of Comfort Dental clinics located in Washington while unlicensed. We now address whether the OIC's proposed imposition of a $5000 penalty against CDGP is lawful given its unlicensed activities in Washington.

9. RCW 48.155.130(1) permits the OIC to impose a monetary penalty of not less than $100, and not more than $10,000, per violation of any provision of RCW Ch. 48.155, and states:

> In lieu of or in addition to suspending or revoking a discount plan organization's license under *RCW 48.155.020(8), whenever the commissioner has cause to believe that any person is violating or is about to violate any provision of this chapter or any rules adopted under this chapter or any order of the commissioner, the commissioner may:
> (a) Issue a cease and desist order; and
> (b) After hearing or with the consent of the discount plan organization and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, impose a monetary penalty of not less than one hundred dollars for each violation and not more than ten thousand dollars for each violation.

(Emphasis added).

10. Respondent at issue in *Preferred Chiropractic Doctor, Inc.*, Docket No. 13-0134 ("PCD"), was a healthcare discount plan organization organized in Alabama in 1993, and since that time had operated in all 50 states, including Washington. PCD provided discounted fees for chiropractic treatment through its nationwide network of chiropractors, including 38-40 providers in Washington. In 2011, PCD became aware that another company had become licensed in all states to be a discount plan organization, and in 2012 became affiliated with that company via contractual agreements. Under one agreement, the company agreed to maintain at all times a valid and current license or registration as a healthcare discount plan organization in those jurisdictions that required that. In exchange, PCD provided a network of chiropractors. Under the other agreement, PCD agreed to affiliate with the other company for the purpose of offering individuals the opportunity to obtain uninsured medical discount services, and PCD had to obtain the approval of the other company for all printed marketing and solicitation material.

11. In 2012 PCD learned that the other company it contracted with was not licensed as a discount plan organization under Washington law, and therefore PCD proceeded in 2013 to apply for a license of its own. On March 22, 2013, PCD discontinued all business activity in Washington, and on April 8, 2013, PCD withdrew its application after it determined it could not show that it met the minimum net worth requirement of RCW 48.155.030(1). On May 17, 2013, the OIC entered a Notice of Request for Hearing for imposition of fines against PCD totaling $152,400 for PCD selling 1,524 healthcare discount plan cards in Washington between January 1, 2009, and January 1, 2012, without a discount plan organization license under RCW Ch. 48.155. At the hearing, the OIC lowered the amount of proposed fines to $102,400, for PCD selling 1,024 discount cards between January 26, 2010, and March 22, 2013, since when RCW Ch. 48.155 was enacted, companies were given a six month grace period (i.e., until 2010) to become licensed under the new law. From January 26, 2010, until March 22, 2013, PCD received roughly $38,000 in membership fees (or issued 1,024 discount plans at $37 per year.).

12. In the Findings of Fact, Conclusions of Law, and Final Order the OIC Presiding Officer issued in *Preferred Chiropractic Doctor, Inc.*, Docket No. 13-0134, she concluded that no fine should be issued against PCD under RCW 48.155.130(1)(b), and stated:

The OIC asserts that in calculating a fine to be imposed, under the wording of RCW 48.155.130(1)(b), each time a PCD discount plan card was sold in Washington after January 26, 2010 constituted a separate violation of RCW 48.155.020. Therefore, the OIC asserts, because 1,024 discount plan cards were sold during this period, the OIC is authorized to fine PCD a minimum of $102,400. ($100 x 1,024 cards) and a maximum of $10,240,000. ($10,000 x 1,024 cards). Therefore, the OIC argues, it is proposing to fine PCD the minimum amount allowed under RCW 48.155.130(1)(b) for these 1,024 separate violations.

4. As the OIC correctly argues, RCW 48.155.130(1)(b) does not require a finding that PCD has willfully operated as a discount plan organization in violation of RCW 48.155.020(1) in order to impose a fine under that statute. However, RCW 48.155.130(1)(b) permits, but does not require, the OIC to impose a fine of between $100 and $10,000 per violation. Therefore, the OIC can choose to impose no fine. As the OIC correctly argues, if the OIC chooses to impose a fine under this statute the minimum fine he can impose is $100 per violation (i.e., $102,400.00) up to a maximum fine of $10,000 per violation (i.e., $10,240,000.00). Authoritative treatises, Washington case law and other courts recognize that even when a statute is not ambiguous (and even though a statute may require imposition of a fine within a range provided, which RCW 48.155.020(1) does not) imposition of a penalty under that statute which would result in an unduly harsh, unjust and disproportionate punishment which is inconsistent with the purposes and policies of the statute cannot be sustained. [FN 1]

[FN 1] E.g., *Sutherland Statutory Construction*; *State of Washington v. McDougal*, 120 Wn.2d 334, 841 P.2d 1232. In *Luther G. Power, Jr. v. The United States*, 209 Ct. Cl. 126; 531 F.2d 505 (1976), an executive agency dismissed an employee based on alleged misconduct which fell within the range of specified activities for which the statute authorized dismissal. On appeal, the Civil Service Commission hearing examiner found that the employee did commit some of the offenses, that these offenses were within the statutory range of activities for which an employee can be dismissed, and upheld the dismissal. After the hearing examiner's decision was affirmed by both the CSC Regional Office and the Board of Appeals and Review, the U.S. Court of Claims reversed and found for the employee. The court held that even though the penalty of dismissal was within the range of penalties permitted by the statute for the employee's misconduct, considering the facts and circumstances the penalty of dismissal was so harsh and disproportionate to the employee's misconduct that the agency's imposition of the penalty constituted an abuse of discretion. The court therefore denied the agency's motion for summary judgment, granted the employee's cross-motion for summary judgment and remanded the case to the trial division to determine the amount of the employee's recovery. In *Hale v. Morgan*, 22 Cal.3d 388, 584 P.2d 512 (1978), state statute required a $100 per day penalty against a landlord who willfully deprives his tenant of utility services. While the trial court correctly calculated the $17,300 penalty required by statute based on the number of days the tenant was deprived of utility services, the Supreme Court of California reversed, holding that

> while the statute was mandatory, it was potentially limitless in its effect regardless of circumstance and thus, under particular circumstances might produce constitutionally excessive penalties. The court further held that while all applications of the statute's mandatory penalty formula would not be unconstitutional, the application of the statute to the present case resulted in a penalty which was *clearly, positively, and unmistakable unconstitutional*, pointing out that the monthly rental for plaintiff tenant's trailer space was $65, while the cumulation of penalties under the statute would have been $36,500 for one year and this amount of penalty was wholly disproportionate to any discernible and legitimate legislative goal, and was so clearly unfair that it could not be sustained.
>
> 5. Therefore, by authorizing a wide range of fine amounts, or no fine at all, RCW 48.155.130(1)(b) recognizes the vast number of different types of violations which may occur and the limitless number of particular situations in which they arise, it allows for consideration of any mitigating circumstances which might be involved in a specific situation (e.g., possibly willfulness, responsiveness to take prompt remedial measures, risk or actual harm to consumers, patterns of practice, etc.) and in this way the imposition of disproportionate or otherwise unreasonable fines can be avoided. However, in this particular situation the minimum fine is disproportionately high. Given these considerations along with the specific facts found above, it must be concluded that the minimum fine of $104,200 which is allowed in the range provided in 48.155.130(1)(b) is unduly harsh and disproportionately excessive given the violations and circumstances found above. For this reason it is hereby concluded that no fine should be imposed on PCD for the activities at issue herein, as is also permitted under RCW 48.155.130(1)(b).

(Underlined emphasis and brackets added).[3]

13. I conclude that the standard applied by the OIC Presiding Officer in *Preferred Chiropractic Doctor, Inc.*, Docket No. 13-0134, in holding that OIC's imposition of penalties under RCW 48.155.130(1)(b) was unlawful, was incorrect. Footnote 1 of that decision applied federal case law addressing dismissal of an executive agency employee for misconduct, finding that dismissal of the employee was disproportionate to the misconduct of the employee and therefore an abuse of discretion by the agency. This case is persuasive precedent at best for purposes of the instant case, especially given that it did not involve an agency's imposition of statutorily authorized fines. The same footnote in Docket No. 13-0134 also summarized a decision of the California Supreme Court which held that the imposition of a $100 per day penalty was unconstitutional. Leaving aside the fact that CDGP has never argued that the $5,000 fine OIC proposes is unconstitutional, an administrative body does not have the authority to declare the statutes it administers to be

[3] Contrary to the outcome in *Preferred Chiropractic Doctor, Inc.*, OIC and Alliance Healthcard of Florida, Inc. ("respondent") entered into a Stipulation and Agreed Order Dismissing Adjudicative Proceedings ("Stipulation") in Docket No. 13-0130. Between June 16, 2011, and September 14, 2012, while an unlicensed discount plan organization, respondent sold at least 1,318 discount plan cards to Washington residents. In the Stipulation, respondent agreed to pay OIC $131,800 in fines, the minimum permitted under RCW 48.155.130(1)(b).

unconstitutional, only courts have that power. *Bare v. Gorton*, 84 Wn.2d 380, 526 P.2d 379 (1975). And the third case cited in that same footnote, *State v. McDougal*, 120 Wn.2d 334, 841 P.2d 1232 (1992) involved a criminal defendant, wherein the Court reversed the appellate court's modification of the trial court's sentencing of defendant, concluding that it was not harsh, unjust, or an absurd result. However, with regards to an agency's imposition of penalties/fines against a party under a statute, other precedent is more applicable to the facts of this case, and demonstrates that OIC's imposition of a $5,000 fine against CDGP is lawful.

14. Appellant in *Shanlian v. Faulk*, 68 Wn. App. 320, 843 P.2d 535 (1992), appealed the trial court's order which affirmed the Department of Licensing's ("DOL's") order imposing a $1,000 statutory penalty caused by appellant's failure to comply with the statutes and rules which apply to real estate brokers. RCW 18.85.230, the statute at issue in *Shanlian*, permitted the DOL to "levy a fine not to exceed one thousand dollars for each offense" against any broker who was guilty of one of twenty-nine specified acts. Appellant argued that DOL's imposition of the penalty was excessive. Appellant also argued that the $1,000 fine was inconsistent with penalties imposed against others for similar violations, after he summarized 72 other cases DOL handled with circumstances similar to his own. In response to Appellant's arguments, the Court in *Shanlian* stated at page 328:

> Moreover, even if the penalty imposed was inconsistent with other penalties imposed, we would find no error. An agency "need not fashion identical remedies", and the courts may "not enter the allowable area of [agency] discretion." *Stahl v. UW*, 39 Wn. App. 50, 55-56, 691 P.2d 972 (1984) (quoting *In re Case E-368*, 65 Wn.2d 22, 29, 395 P.2d 503 (1964)). Because the statute authorizes a $1,000 fine for each offense, and because Shanlian violated more than one provision of the statute and regulations, the penalty imposed was within the agency's discretion.

As stated in *Stahl*, 39 Wn. App. at 975-976:

> "The relation of remedy to policy is peculiarly a matter for administrative competence, and the rule is that courts must not enter the allowable area of the board's discretion." . . . In the absence of a statutory requirement, agencies need not fashion identical remedies in each case.

(Citations omitted).

15. In *In the Matter of Case E-368* (or *Arnett v. Seattle General Hosp.*), 65 Wn.2d at 29-30, in setting aside the trial court's modification of an order of the Washington State Board Against Discrimination, the Court emphasized the sanctity of an agency's choice as to how it administers a statute that gives it discretion, stating:

> It is the well-established law in this state, as well as in other jurisdictions, that modifications of administrative orders by a court of review are limited to acts that are arbitrary or

capricious, or where the tribunal proceeded on a fundamentally wrong basis, or beyond its power under the statute. The general rule is well stated in 2 Am. Jur. (2d), Administrative Law § 672:

"Administrative agencies have considerable latitude to shape their remedies within the scope of their statutory authority, especially where a statute expressly authorizes the agency to require that such action be taken as will effectuate the purposes of the act being administered. The relation of remedy to policy is peculiarly one for the administrative agency and its special competence, at least the agency has the primary function in this regard. In particular cases, it is held that the fashioning of the remedy or the propriety of the order is a matter for the administrative agency and not for the court; that the courts may not lightly disturb the agency's choice of remedies; that the order should not be overturned in the absence of a patent abuse of discretion or a showing that it is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the statute; or that the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist, or is unwarranted in law or without justification in fact. Where there is a sufficient basis for the orders issued it is no concern of the court that other regulatory devices might be more appropriate, or that less extensive measures might suffice. Such matters are the province of the legislature and of the administrative agency. . . ."

See *Whatcom Cy. v. Langlie,* 40 Wn. (2d) 855, 246 P. (2d) 836 (1952); *Morgan v. Department of Social Sec.,* 14 Wn. (2d) 156, 127 P. (2d) 686 (1942); *Sweitzer v. Industrial Ins. Comm.,* 116 Wash. 398, 199 Pac. 724 (1921).

The reasoning of the trial judge in his oral opinion modifying the tribunal order was not based on the ground that the tribunal exceeded its statutory power, or that the board's action was arbitrary or capricious, but the order was modified solely because the trial judge disagreed with the judgment exercised by the tribunal as to the necessary action to be taken in this case to effectuate the policy against further discrimination. The trial judge substituted his judgment for that of the tribunal and, in so doing, acted beyond his power.

(Emphasis added).

16. During the evidentiary hearing on this matter, counsel for the OIC discussed the factors/criteria the OIC's Compliance Committee (of the OIC's Compliance Group) considers when taking action against a company under RCW Title 48, whether fines or something more permanent (suspension, revocation, etc.). Exhibit 1. While one of the factors emphasizes consistency with other enforcement actions taken by the OIC, the law outlined above does not require absolute consistency. Exhibit 1. Therefore, the fact that OIC reaches different conclusions on imposition of penalties under RCW Ch. 48.155 in different cases is not a basis to overturn the OIC's proposed imposition of $5,000 penalty against CDGP. Furthermore, even though there is no claim or evidence that CDGP harmed consumers in Washington, the fact that CDGP operated

unlicensed for years in Washington is counter to the policy and legislative history of RCW Ch. 48.155 outlined above, whose impetus was to respond to 400 consumer complaints involved with the discount plan industry in Washington, establish standards discount plan organizations must comply with, and achieve NAIC compliance. Under RCW 48.155.130(1)(b), CDGP's sale of 2,595 memberships over a three year period while unlicensed, assuming each sale is a separate violation, exposed it to a minimum fine of $259,500, and a maximum fine of $25,950,000. Either figure dwarfs the $5,000 proposed by OIC, which is equivalent to the minimum $100 fine on only 50 violations (i.e., sales of discount plan memberships).

17. Finally, CDGP's position that its ignorance of RCW Ch. 48.155, and the regulations promulgated thereunder by the OIC (WAC Ch. 284-155), applied to its sale of discount plans in Washington, does not offer it relief from the $5,000 penalty proposed by OIC. As stated in *Leschner v. Dep't of Labor and Indus.*, 27 Wn.2d 911, 926, 185 P.2d 113 (1947): ". . . [I]gnorance of the law excuses no one." (Brackets added). Similarly, *Barlow v. United States*, 32 U.S. 404, 411, 8 L.Ed 728 (1833) states: "It is a common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally. . . ."

ORDER

Per RCW 48.155.130(1)(b), a $5,000 fine is imposed on CDGP for its sale while unlicensed of 2,595 discount plans to members in the State of Washington, in violation of RCW 48.155.020(1). CDGP shall pay this amount within thirty (30) days of the date of this Order.

Dated: February 1, 2016

William G. Pardee
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.

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 Findings of Fact, Conclusions of Law and Final Order on the following people at their addresses listed below:

Brent E. Haden, Attorney at Law
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Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
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Dated this 18th day of February, 2016, in Tumwater, Washington.

Dorothy Seabourne-Taylor
Paralegal
Hearings Unit