

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of:

WADGCO, LLC/WALGREEN CO.

Applicant.

Docket No. 16-0304

NOTICE OF HEARING

TO: David B. Robbins
Kristina J. Holm
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
Gayle Pasero, Company Licensing Mgr., Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

On August 10, 2015, WAGDCO, LLC ("WAGDCO") submitted to the Office of the Insurance Commissioner ("OIC") a "completed" application to be a discount plan organization ("DPO") On September 8, 2016, the OIC's Company Supervision Division denied WAGDCO's application to be discount plan organization ("DPO"). On December 8, 2016, WAGDCO filed a demand for hearing appealing the OIC's denial arguing that it should be reversed for the following reasons:

- The OIC violated RCW 48.155.020(6)(a) by failing to approve or disapprove WAGDCO's application within 90 days of receiving it;
- To the extent the OIC's denial found that WAGDCO's application had any deficiencies, the OIC violated RCW 48.155.020(5) by not informing WAGDCO of the same within 90 days of receiving its application;
- The deficiencies and other issues OIC cites as justification of its denial are unsupported by either statutory or regulatory law;

- The OIC's denial of WAGDCO's application is contrary to the purpose of the statutory scheme (RCW Ch. 48.155) which is to protect consumers. Since its application, WAGDCO has been unable to provide consumers with access to Walgreens Prescription Savings Club ("PSC"), depriving consumers of savings of approximately \$200 per year per consumer.

WAGDCO alleges that since 2009 Walgreens and its affiliates have offering a successful nationwide DPO, PSC. WAGDCO asserts that PSC is licensed across the country, and alleges that PSC has saved uninsured and underinsured consumers of prescription drugs hundreds of millions of dollars. PSC offers discounts on prescription drugs, immunizations and other pharmacy items at over 8,000 Walgreens retail pharmacy locations and on Walgreens Healthcare Clinic services. WAGDCO alleges that in Washington State, consumers who are members of PSC have saved approximately \$51 million below retail pricing.

Since its inception in 2009, PSC was not licensed in the state of Washington (or with the OIC) because it was originally operated by a pharmacy benefit manager ("PBM") that was a wholly-owned subsidiary of Walgreens, and thus was statutorily exempt under RCW 48.155.020(5)(b), which explains that PBMs are not DPOs. Following Walgreens' sale of its PBM, it underwent a series of corporate restructuring initiatives, and responsibility for the PSC was vested in one of Walgreens' wholly-owned subsidiaries, WAGDCO. Hence WAGDCO's application with the OIC in 2015 to be a DPO.

On January 9, 2017, the undersigned held a first prehearing conference. Darryl Colman, Insurance Enforcement Specialist of the OIC's Legal Affairs Division, appeared on behalf of the OIC. Attorneys David B. Robbins and Kristina J. Holm of Perkins Coie LLP represented WADGCO.

After considering the views of the Parties, I enter the following Order:

By March 31, 2017, the parties shall complete all discovery, including depositions. By May 5, 2017, the parties shall serve and file dispositive Motions. By May 19, 2017, the parties shall serve and file Responses to such Motions. By May 26, 2017, the parties shall serve and file Replies to such Responses. I expect to rule without oral argument as soon as possible after briefing is complete.

Assuming this matter is not resolved based upon the dispositive Motions, a hearing will be held at the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA, beginning on Monday, June 26, 2017, at 10:00 a.m., Pacific Standard Time. The hearing is expected to last five days and will continue from day to day until completed. The purpose of the hearing is to consider whether the OIC's denial of WAGDCO's application to be a DPO is legally justifiable pursuant to RCW Ch. 48.155, WAC Ch. 284-155, other relevant statutory and regulatory provisions, and the common law.

By June 13, 2017, the parties shall exchange copies of witness lists. By June 19, 2017, the parties shall exchange exhibit lists, proposed exhibits, briefs, and any other documents they expect to offer into evidence at the evidentiary hearing consistent with WAC 10-08-140. Any witness and exhibit

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lists, proposed exhibits, briefs and documents so provided should also be provided to the Hearings Unit at the address below.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented and may examine witnesses, respond, and present evidence and argument on all relevant issues.

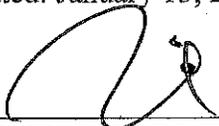
A party who fails to attend or participate in the hearing or another stage of this proceeding may be held in default in accordance with Chapter 34.05 RCW. *See*, RCW 34.05.434(2)(i).

William Pardee, Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted by the Insurance Commissioner under Chapter 48.04 RCW.

Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with RCW Ch. 2.42, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by RCW Ch. 2.42. A Request for Accommodation form, with instructions, is attached to the original of this Notice.

All case related documents and correspondence shall be directed to the Hearings Unit, Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, Dorothy Seabourne-Taylor, at the same address. Ms. Seabourne-Taylor's telephone number is (360) 725-7002.

Dated: January 13, 2017



WILLIAM PARDEE
Presiding Officer

CERTIFICATE OF SERVICE

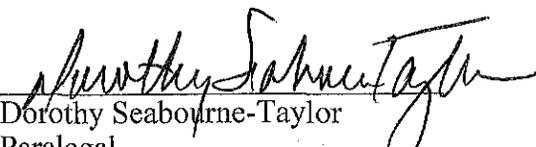
The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

On the date given below I caused to be filed and served the foregoing Notice of Hearing on the following people at their addresses listed below:

David B. Robbins
Kristina J. Holm
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
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AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Dated this 13th day of January, 2017, in Tumwater, Washington.


Dorothy Seabourne-Taylor
Paralegal
Hearings Unit

OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT
Fax: (360) 664-2782

To request an interpreter, complete and mail this form to:

Presiding Officer
Hearings Unit
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY

I am a party in Matter No. 16-0304 before the Insurance Commissioner.

I request accommodation for the following disability (insert your disability):

I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____

Signed: _____

Please print or type your name: _____

Address: _____

Telephone: _____