

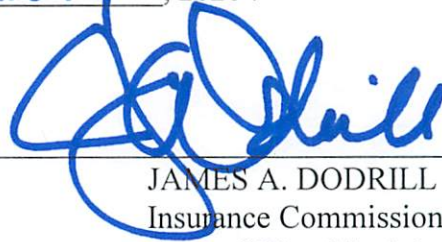
BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

MAKINA HEALTH, INC.
ADMINISTRATIVE NO.: 19-AP-CO-02003

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopt and approve the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. It is consequently ORDERED that, having found that Makina Health, Inc. violated West Virginia Code § 33-44-4(a), a cease and desist order be issued, that Makina Health, Inc. be fined \$20,000.00 for each violation for a total of \$100,000.00, and to pay the costs associated with the hearing.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

ENTERED this 31ST day of January, 2020 .



JAMES A. DODRILL
Insurance Commissioner
State of West Virginia

**BEFORE JAMES A. DODRILL
INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA**

**MAKINA HEALTH, INC.
ADMINISTRATIVE NO.: 19-AP-CO-02003**

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On November 5, 2019, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. Jeff Black, Esquire, Supervising Attorney, Greg Elam, Esquire, Associate Counsel, Justin Parr, Insurance Financial Specialist Supervisor, Steven Baxter, Investigator and Robert Carter appeared on behalf of West Virginia Offices of the Insurance Commissioner. No one made an appearance on behalf of Makina Health, Inc.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Makina Health, Inc. (hereinafter "Respondent"), is a health cooperative registered in the State Texas and doing business in West Virginia. The Respondent is not currently licensed in the State of West Virginia and has never had a license here. (Tr. 20; Ex. 1)
2. Mr. Robert Carter is an independent insurance agent in the Martinsburg West Virginia area. Mr. Carter has been an agent for fifteen years with most of his business career with AFLAC. (Tr. 5-6)
3. Nearly two years ago, Mr. Carter was contacted by Mr. Daran Wycoff to talk to him about an opportunity with the Respondent. Mr. Wycoff told Mr. Carter that the Respondent offered

an alternative approach to traditional health Insurance. (Tr. 6-7)

4. Mr. Wycoff allegedly stated that the Respondent was a cooperative which pooled money from the Plan members to pay larger claims. In addition, there was also a front end portion of the Plan called Mini-Med to meet the individual mandate under the Affordable Care Act.¹ Mr. Carter believed that the Plan offered by the Respondent sounded like a good alternative health plan. (Tr. 7-8)

5. Mr. Carter marketed the Respondent's plan to small businesses in West Virginia. Under the Respondent's plan, the employer would pay a monthly premium and if an employee of that employer had a medical condition covered under the Plan, the Respondent would pay the medical costs. (Tr. 9)

6. Mr. Carter testified that he sold the Respondent's plan to West Virginia Gyms (dba Gold's Gym), Mitch's Body Shop, Country Roads Tire and Auto, Basic Electric and Advocate Insurance Company. All of these businesses are located in West Virginia.² (Tr. 12-13)

7. Once Mr. Carter learned that the Respondent was not licensed by the State of West Virginia, he informed all of his clients. Only one of his clients, Advocate Insurance Company, decided to withdraw from the Respondent's Plan. The remaining clients, to his knowledge, continued with the Respondent's Plan. (Tr. 14)

¹At this time the individual mandate of the Affordable Care Act has been eliminated. However, the legality of the elimination is being determined by the courts.

²Mr. Baxter later testified that there were other employers in West Virginia than those listed here. After the hearing Mr. Black sent a letter to the Hearing Examiner stating that Mr. Baxter was referring to Employers who had West Virginia employees, but were located in another state. Therefore, there were no other West Virginia businesses, other than those listed above, that purchased the Respondent's Plan.

8. Mr. Justin Parr works for the West Virginia Offices of the Insurance Commissioner as the Insurance Financial Specialist Supervisor. Mr. Parr confirmed that the Respondent does not currently have a West Virginia License, has never had one, and has never applied for one. (Tr. 19-20)

9. Mr. Steven Baxter works for the West Virginia Offices of the Insurance Commissioner as an investigator in the Martinsburg, West Virginia, field office. Mr. Baxter began his investigation of the Respondent when he was contacted about the Respondent by an agent.³ This agent informed Mr. Baxter that the agent had been contacted by Mr. Carter concerning the Respondent. The agent attempted to find out whether the Respondent was licensed by the West Virginia Offices of the Insurance Commissioner. Once he determined that Respondent wasn't licenced, the agent contacted Mr. Baxter. At that point Mr. Baxter began his investigation of the Respondent. (Tr. 25-26)

10. During the course of his investigation, Mr. Baxter interviewed Mr. Carter. Mr. Carter was the agent that approached the agent, referred to above, to recruit him to sell for the Respondent. As far as Mr. Baxter could determine, Mr. Carter did not recruit any other agent. Mr. Baxter also visited Country Roads and Tire as part of his investigation and obtained a copy of the Respondent's brochure, which appears to be a policy. After the interview, it was Mr. Baxter's opinion that the Respondent's policy was not fully explained to the insured, Country Roads. (Tr. 26-27; Ex. 1)

11. Mr. Baxter reviewed the NAIC report when he initiated his investigation and the day before the hearing, and determined that the Respondent did not have a license in any state. (Tr.

12. The West Virginia Offices of the Insurance Commissioner entered into evidence

³The name of this agent was not provided during the hearing.

Idaho's Department of Insurance's cease and desist order against the Respondent, as well as one from the state of Alaska. (Tr. 36-37; Ex. 6, 7)

13. On September 20, 2019, the West Virginia Offices of the Insurance Commissioner sent an Administrative Complaint, a Notice of Hearing, and Interrogatories to the Respondent.

14. In the Administrative Complaint the West Virginia Offices of the Insurance Commission charged that the Respondent violated West Virginia Code § 33-44-4(a) and is seeking a Cease and Desist Order and a penalty of \$20,000.00 for every violation of unauthorized transactions of providing insurance in the State of West Virginia without a license.

15. The Notice of Hearing sent to the Respondent stated that the hearing would be held on November 5, 2019 at 9:30 a.m., neither the Respondent, nor anyone on its behalf, made an appearance.

ISSUE PRESENTED

Whether the Respondent violated West Virginia Code § 33-44-4(a) by engaging in the unauthorized transaction of Insurance in the State of West Virginia and if so, what is the penalty?

BURDEN OF PROOF

The West Virginia Offices of the Insurance Commissioner has the burden of proof to prove that the Respondent engaged in unauthorized transactions of insurance in the State of West Virginia..

JURISDICTION

The West Virginia Offices of the Insurance Commissioner has jurisdiction over matters arising under West Virginia Code Chapter 33.

ANALYSIS

The Respondent has been accused of engaging in insurance transactions in the State of West

Virginia without a license. The Respondent did not make an appearance at the hearing.

The first issue to determine is whether the Respondent's product fits the definition of insurance as found in West Virginia Code § 33-1-1 which states:

Insurance is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies.

The Respondent, according to the evidence presented, sold a Plan to various West Virginia Companies in order to provide coverage for certain medical bills. If the employer bought the Plan the employees would pay premiums to the Respondent. In exchange for a premium, the Respondent would reimburse the Company's employees any bills submitted for medical treatments if those treatments were covered under the agreement. The agreement, between the Employers and the Respondent created a contract.

The definition of insurance not only requires a contract, but that there be either an indemnification or payment upon a defined event. The Respondent, under the contract, agreed to pay the employees for any costs incurred on covered medical conditions. In other words, the agreement requires the Respondent to pay medical claims under a contract. Therefore, the product that the Respondent was selling is insurance as defined under West Virginia Code § 33-1-1.

Once it has been has been determined that the Respondent has engaged in the business of Insurance, we must then look at West Virginia Code § 33-44-4(a), which states the following:

Unlawful transaction of insurance.

(a) It is unlawful for any person to engage in any act which constitutes the transaction of insurance under the provisions of this article unless authorized by a license in force pursuant to the laws of this state, or unless exempted by the insurance laws of this state. Any person or insurer engaged in any act which constitutes the unauthorized transaction of insurance shall be subject to the provisions contained in chapter thirty-three of the code and the provisions and penalties set forth in this

article.

As stated above, the Plan offered by the Respondent meets the definition of insurance. The next issue is whether the Respondent engaged in any transactions of insurance. The evidence was clear that the Mr. Carter sold at least five of the Respondent's insurance plans to various employers located in West Virginia. By accepting the money from these employers, the Respondent engaged in transactions of insurance.

It is not a violation of West Virginia Code § 33-44-4(a) if the entity is engaged in a transaction of insurance and is licensed by the State of West Virginia. The evidence at the hearing was that the Respondent is not currently licensed, has not been licensed in the past, and has never applied for a license. Therefore, the Respondent does not meet this exception.

The only other way for the Respondent to avoid a violation is if it is exempted by the laws of the State. There was no evidence presented that the Respondent was exempt from the insurance laws of the State of West Virginia. In fact, all the evidence points to the fact that the Respondent's Plan is not at all exempt.

Since the Respondent does not meet the exception or the exemption contained in West Virginia Code § 33-44-4(a), the West Virginia Office of the Insurance Commissioner has proven that the Respondent violated West Virginia Code § 33-44-4(a), by unlawfully engaging in the transaction of insurance without a license.

The final issue to look at is West Virginia Code § 33-44-7 to determine any remedy associated with the violation. This Code section is as follows:

Administrative relief.

(a) Any person engaged in any act which constitutes the unauthorized transaction of

insurance as set forth in this article may, after notice and hearing pursuant to section thirteen, article two of this chapter, be fined by the commissioner a sum not to exceed \$20,000 for each unauthorized act or transaction of unauthorized insurance.

(b) Any person engaged in any act which constitutes the unauthorized transaction of insurance as set forth in this article may be assessed restitution by the Insurance Commissioner in an amount sufficient to reimburse any and all insureds for the unpaid claims, if, after notice and hearing pursuant to section thirteen, article two of this chapter, the commissioner finds that the unauthorized insurer has failed to pay claims of its insureds in accordance with the terms of the contracts.

This Code section authorizes the Insurance Commissioner to levy fine up to \$20,000.00 for each violation of the unauthorized transaction of insurance in the State of West Virginia. In addition, the Commissioner can assess restitution for any unpaid claims by the Respondent. There was no evidence that there were any unpaid claims at the time of the hearing. However, if it is determined that such claims exist, the Commissioner can order restitution.

By presenting evidence that the Respondent engaged in unauthorized transactions of insurance in the State of West Virginia, the West Virginia Offices of the Insurance Commissioner has proven that the Respondent violated West Virginia Code § 33-44-4(a). By proving this violation, the Commissioner is authorized to levy a fine up to \$20,000.00 for each violation under West Virginia Code § 33-44-7.

CONCLUSIONS OF LAW

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commissioner has the burden to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-44-4(a).
2. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the product being sold by the Respondent was insurance as

defined in West Virginia Code § 33-1-1, and met the definition of insurance.

3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-44-4(a), by proving that the Respondent entered into at least five insurance transactions in the State of West Virginia.

4. By proving that the Respondent violated West Virginia Code § 33-44-4(a), under West Virginia Code § 33-44-7, the Commissioner can issue a cease and desist order, issue a fine up to \$20,000.00 per violation, and assess costs associated with this hearing.

RECOMMENDED DECISION

It is recommended that the complaint of the West Virginia Offices of the Insurance Commissioner against Makina Health, Inc. be upheld, that a cease and desist order be issued, that the Respondent be fined \$20,000.00 for each violation for a total of \$100,000.00, and to pay the costs associated with the hearing.

Respectfully recommended,


MARK W. CARBONE
HEARING EXAMINER

Date: January 16, 2020