

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER  
OF THE STATE OF WEST VIRGINIA

FILED

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*In the Matter of:*

**ASSOCIATION HEALTH CARE MANAGEMENT, INC. (DMP003)**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Administrative Proceeding No. 20-FINCON-02041

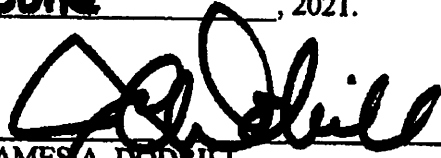
FINAL ORDER

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 and facts and conclusions of law therein contained. It is consequently **ORDERED** that the Administrative Complaint against Association Health Care Management, Inc., be upheld and that the discount Medical Plan Organization license of Association Health Care Management, Inc. be **REVOKED**.

Association Health Care Management, Inc. is further assessed and **ORDERED** to pay the costs of the hearing in the amount of one thousand one hundred fifty-six dollars (\$1,156.00).

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

ENTERED this 7<sup>th</sup> day of June, 2021.

  
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JAMES A. DODRILL  
Insurance Commissioner

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

*In the Matter of*

**ASSOCIATION HEALTH CARE MANAGEMENT, INC.**

**Administrative Proceeding No.: 20-FINCON-02041**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On February 17, 2021, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Offices of the Insurance Commissioner. Association Health Care Management, Inc. (hereinafter, "Respondent") did not make an appearance. Gregory A. Elam, Esquire, and Justin Parr, Chief Financial Analyst, appeared on behalf of West Virginia Offices of the Insurance Commissioner

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.

**Statement of the Case**

A Complaint to revoke its Certificate of Authority was filed against the Respondent alleging that the Respondent had a negative net worth and a net loss in violation of West Virginia Code § 33-15E-5.

**Findings of Fact**

1. The Respondent is organized and headquartered in Houston, Texas, and is authorized as a Discount Medical Provider Organization in the State of West Virginia.
2. The Respondent was issued a Certificate of Authority by the West Virginia Insurance Commissioner on July 29, 2008. The Respondent is domiciled in Texas with its corporate address

being 11111 Richmond Avenue, Suite 200, Houston, Texas 77082.

3. On May 6, 2020, the West Virginia Offices of the Insurance Commissioner received the Respondent's application for renewal of its Discount Medical Plan Organization. The application contained the documents required for renewal, including financial statements. ( Tr. 8; Ex. 3)

4. On October 14, 2019, the Respondent filed bankruptcy and is currently operating as a Debtor in Possession. (See Complaint)

5. According to the testimony of Justin Parr, Chief Financial Analyst for the West Virginia Offices of the Insurance Commissioner, the Respondent's quarterly financial statement for June 30, 2020, indicated a net loss of \$247,697 and a total Stockholder's Deficit of \$637,247. (Tr. 9-10; Ex. 3)

6. Upon review of the application, the West Virginia Offices of the Insurance Commissioner determined that the Respondent did not qualify to renew its license based upon its financial condition. (Tr. 9; Exhibit 3, 4)

7. On July 1, 2020, Dean Hastings of the West Virginia Offices of the Insurance Commissioner sent an email to Zachary Nye, Respondent's Compliance Officer, stating that the Respondent is not in compliance. Mr. Hastings requested additional information. In the email, Mr. Hastings stated that according to the financial statements provided by the Respondent, the Respondent was in bankruptcy and not in compliance with West Virginia's insurance laws. The email went on to say that unless the Respondent can prove that this information is incorrect, then the West Virginia Offices of the Insurance Commissioner could not renew Respondent's license as a Discount Medical Provider. (Tr. 10; Ex. 4)

8. On July 28, 2020, Mr. Hastings sent another email to Mr. Nye stating that since he had not responded to the July 1, 2020, email, the West Virginia Offices of the Insurance Commissioner would be suspending the Respondent's license as a Discount Medical Provider. (Tr. 10; Ex. 4)

9. The West Virginia Offices of the Insurance Commissioner then sent a Notice of Hearing to the Respondent by certified mail. The Notice informed the Respondent that a hearing would be held at 1:00 p.m. on February 17, 2021, to determine whether the Insurance Commissioner would revoke the Respondent's license as a Discount Medical Provider. Attached to the Notice was a copy of the Complaint against the Respondent. (Ex. 1)

10. At the time of the hearing, the Respondent had eleven individuals that were members and lived in West Virginia. (Ex. 3)

11. The hearing was held as scheduled on February 17, 2021, as listed in the Notice of Hearing. No representative of the Respondent appeared at the hearing.

#### **Issue**

Whether the Respondent meets West Virginia licensing requirements under West Virginia Code § 33-15E-5 and, if not, should the Respondent's Certificate of Authority be suspended or revoked.

#### **Burden of Proof**

The West Virginia Offices of the Insurance Commissioner has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of the State of West Virginia.

#### **Jurisdiction**

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3.

**Analysis**

The West Virginia Offices of the Insurance Commissioner has the duty to monitor Discount Medical Provider Organization's licensed in the State of West Virginia. This monitoring authorization can be found in West Virginia Code § 33-15E-2 which states as follows:

§33-15E-2. Purpose.

The purpose of this article is to establish standards for discount medical plan organizations and discount prescription drug plan organizations in order to better protect consumers from unfair or deceptive marketing, sales and enrollment practices and to facilitate consumer understanding of the role and function of the organizations in providing access to medical or ancillary services.

As such, Discount Medical Providers are required to submit financial statements to determine whether they meet the West Virginia requirements under West Virginia Code § 33-15E-5 which states as follows:

§33-15E-5. Minimum capital requirements.

(a) Before the commissioner issues a license to any person required to obtain a license under section four of this article, the person seeking to operate a discount medical plan organization shall demonstrate that it has a positive net worth of at least \$150,000.

(b) Each discount medical plan organization shall at all times maintain a positive net worth of at least \$150,000.

It was the testimony at the hearing, according to the financial statements submitted by the Respondent, that the Respondent had a net loss of \$247,697 and a total Stockholder's Deficit of \$637,247.

The Respondent was attempting to renew its license, however, under West Virginia Code § 33-15E-5, the Respondent must maintain a positive net worth of at least \$150,000 in order for the Insurance Commissioner to issue a renewed license. The financial statements of the Respondent clearly indicate that the Respondent has fallen below the threshold minimum of \$150,000, therefore, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-15E-5.

Once it is determined that the Respondent has violated West Virginia Code § 33-15E-5, then we must look at West Virginia Code § 33-15E-14, which states as follows:

§33-15E-14. Administrative enforcement actions; injunctions.

(a) The commissioner may investigate the business affairs and conduct of every person applying for or holding a discount medical plan organization license and the operational affairs of a discount prescription drug plan organization to determine whether a violation of this article or any rule promulgated hereunder has occurred or is occurring.

(b) If the commissioner has cause to believe that a violation of this article or any rule promulgated hereunder has occurred or is occurring and that an enforcement action may be warranted, he or she shall notify the discount medical plan organization or discount prescription drug plan organization in writing, specifically stating the grounds for enforcement action and informing the organization that it may pursue a hearing on the matter in accordance with the provisions of section thirteen, article two of this chapter.

(c) If, after notice and hearing, a violation of this article or any legislative rule promulgated under this article is found, the Insurance Commissioner may take one or more of the following enforcement actions:

- (1) Place a discount medical plan organization on probation or suspend, revoke or refuse to issue or renew the organization's license;
- (2) Levy a civil penalty on the organization in an amount not exceeding \$10,000 for each violation;

(3) Issue an administrative order requiring the discount medical plan organization or discount prescription drug plan organization to cease and desist from engaging in the act or practice that constitutes the violation; or

(4) Suspend the authority of the discount medical plan organization or discount prescription drug plan organization to enroll new members.

(d) In addition to the penalties and other provisions of this article, the commissioner may seek both temporary and permanent injunctive relief in the circuit court of Kanawha County when a discount medical plan is being operated by a person or entity that is not licensed pursuant to this article or any person has engaged or is engaging in any activity prohibited by this article or any rule adopted pursuant to this article.

According to the evidence, the West Virginia Offices of the Insurance Commissioner followed the steps outlined in West Virginia Code § 33-15E-14. The Offices of the Insurance Commissioner investigated the Respondent after receiving its application for a renewal of its Discount Medical Provider license. After the investigation was completed, Mr. Hastings, on two occasions, attempted to contact the Respondent in order to obtain an explanation of the financial situation of the Respondent. When Mr. Hastings did not receive a response to his inquiries the West Virginia Offices of the Insurance Commissioner placed the Respondent on notice of hearing. The hearing was to determine whether the attached Complaint was supported by the evidence.

The hearing was held on February 17, 2021. No representative of the Respondent made an appearance at the hearing. During the hearing, the West Virginia Offices of the Insurance Commissioner proved that the Respondent violated West Virginia Code § 33-15E-5, when it proved, by a preponderance of the evidence, that the Respondent's net worth was below \$150,000. By proving the violation, the West Virginia Offices of the Insurance Commissioner is empowered, under

West Virginia Code § 33-15E-14, to suspend or revoke the Respondent's Discount Medical Provider Organization license.

**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 the insurance laws of West Virginia.

2. West Virginia Code § 33-15E-2 authorizes the West Virginia Insurance Commissioner is to establish standards for discount medical plan organizations.

3. The West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-15E-5 by proving that the Respondent fell below the \$150,000 minimum positive net balance in its audited financial statement.

4. Under West Virginia Code § 33-15E-14, the West Virginia Insurance Commissioner is authorized to suspend or revoke a license for a Discount Medical Plan Organization if, after an investigation, hearing, and determining that the Organization had violated the insurance laws of West Virginia

**Recommended Decision**

It is recommended that the West Virginia Offices of the Insurance Commissioner proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code §§ 33-15E-5, therefore, the Respondent's Discount Medical Plan Organization license be revoked and the Respondent be assessed the costs of this proceeding.



Respectfully recommended,



MARK W. CARBONE  
HEARING EXAMINER

Date: May 5, 2014