

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of:

ZOOM HEALTH PLAN, INC., ZOOM
MANAGEMENT, INC., DR. DAVID
SANDERS AND DR. ALBERT DIPIERO

Respondents.

Case No. INS-16-0312

ORDER TO CEASE AND DESIST,
FINAL ORDER IMPOSING CIVIL
PENALTIES AND CONSENT TO
ENTRY OF ORDER

The Director of the Department of Consumer and Business Services for the State of Oregon (“Director”), acting in accordance with Oregon Revised Statutes (“ORS”) chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 743B, 744, 746, 748 and 750 (“Insurance Code”), has conducted an investigation into the insurance related activities of Zoom Health Plan, Inc., Zoom Management, Inc., Dr. David Sanders and Dr. Albert DiPiero (collectively “Respondents”).

Respondents wish to resolve and settle this matter with the Director by consenting to entry of this Order.

Now, therefore, as evidenced by the signature(s) subscribed on this Order, Respondents hereby CONSENT to entry of this Order.

FINDINGS OF FACT

The Director FINDS that:

1. Zoom Health Plan, Inc. (“ZHP”) is licensed in the State of Oregon as a domestic insurer with its principal place of business at 1455 NW Irving Street, Portland, Oregon 97209. On August 4, 2014, the Director issued to ZHP a Certificate of Authority to transact insurance in Oregon.

Filing Accounting Statements

2. ZHP filed an annual statement as of December 31, 2016 that recorded Capital & Surplus of \$2,873,168, which included a new surplus note issued December 30, 2016 in the

amount of \$3,000,000 (“December Surplus Note”). Note 13.11 indicated that the note had been issued for cash.¹

3. ZHP never received the funds for the December Surplus Note. As a result, this is a Type II non-recognized subsequent event pursuant to SSAP 9, paragraph 8, and therefore the December Surplus Note should not have been included as assets or Capital & Surplus of the company.

4. As of the date of this order, ZHP and Zoom Management, Inc. (“ZMI”) have not executed the note using the approved form sent by the Division. As of the date the annual statement was filed, the funds for the \$3,000,000 note had not been received. As of the date of this Order, the note has been extinguished by an accord and satisfaction.

Holding Company Registration Statements

5. ZHP filed its Holding Company Registration Statement (“Form B”) for 2015 on or before April 30, 2016.

6. According to the 2015 Form B, ZHP is owned by Dr. David Sanders (40%), Dr. Albert DiPiero (40%), and Endeavor Capital (20%). According to the 2015 Form B, ZMI is owned by Dr. David Sanders (27.1%), Dr. Albert DiPiero (27.1%), Endeavor Capital (38.2%), and by other parties (7.5%).

7. In the December 31, 2015 Holding Company Registration Filing, received on or before the April 30, 2016 filing due date, ZHP did not include the audited financial statements of ZMI, or the CPA-reviewed financial statements of Dr. Sanders or Dr. DiPiero. ZMI, Dr.

¹ SSAP 41 allows for insurance companies to issue debt type instruments, called surplus notes, that are considered to be equity (capital & surplus) investments, if certain terms are in place within the language of the note. SSAP 72, paragraph 4, allows for a surplus note to be issued, requested and approved after the actual statement date, but prior to the statement filing date, and recorded as a Type I Subsequent Event under SSAP 9, so long as the assets/funds for payment of the note issued are received and in the physical custody of the insurer at the time that the annual financial statement is filed with the Division.

DiPiero and Dr. Sanders either filed late or failed to file CPA reviewed statements on five separate occasions.

Responses to the Director

8. In 2017, ZHP either filed a late report or failed to respond to a direct request of the Director on four separate occasions.

CONCLUSIONS OF LAW

The Director CONCLUDES that:

Cease and Desist

9. Pursuant to ORS 731.252(1), whenever the Director has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the Insurance Code, the Director may issue an order to discontinue or desist from such violation or threatened violation.

Statements not in Compliance with Statutory Accounting Principles

10. Pursuant to 750.055(1)(a), 731.574, 733.210, OAR 836-011-0000 and Bulletin 2007-5, ZHP was required to file an annual financial statement for December 31, 2016, post marked by March 1, 2017, using the format of the National Association of Insurance Commissioners' (NAIC) Annual Statement Instructions and Blank, and following the prescribed accounting methodologies of the NAIC's Accounting Practice & Procedure Manual (AP&P).

11. The December 31, 2016 annual statutory statement filed for ZHP, which included the \$3,000,000 surplus note, did not comply with SSAP 72, 9, 41 and 4 and was filed in violation of ORS 733.210, ORS 731.574, ORS 750.045, OAR 836-011-0000 and Bulletin 2007-5.

Filing Noncompliant Holding Company Registration Statements

12. Pursuant to ORS 732.548 to 732.592 and OAR 836-027-0001 to 836-027-0180, ZHP was required to file its annual registration statement, Form B, on or before April 30th of the following year outlining details of the Holding Company System. The Form B is to include the

audited financial statements for any controlling company and CPA-reviewed statements for any controlling individuals.

13. Pursuant to ORS 731.296, 731.300, 731.304 and 732.584, ZHP was required to produce ZHP's Form B, specifically ZMI's audited financial statement for 2015, not later than February 15, 2017.

14. Pursuant to ORS 732.551, 732.552, 732.556 and OAR 836-027-0001 to 836-027-0180, Dr. Sanders' CPA-reviewed financial statement for 2015 was required to be filed on or before April 30, 2016.

15. Pursuant to ORS 732.551, 732.552, 732.556 and OAR 836-027-0001 to 836-027-0180, Dr. DiPiero's CPA-reviewed financial statement for 2015 was required to be filed on or before April 30, 2016.

Failures to Timely File or Timely Respond to the Director

16. Pursuant to ORS 731.574, OAR 836-011-0000 and 836-031-0630 to 836-031-0690, the Actuarial Opinion was required to be filed on or before March 1, 2017.

17. Pursuant to ORS 731.574, OAR 836-011-0000 and OAR 836-011-0500 to 836-011-0600, ZHP was required to file the Annual Statement - Risk Based Capital Report - Electronically with NAIC on or before March 1, 2017.

18. Pursuant to ORS 731.488, 731.574, OAR 836-011-0000 and OAR 836-011-0120, ZHP's 2016 Annual Audited Financial Statement was required to be file on or before June 1, 2017.

19. Pursuant to ORS 732.574, OAR 836-027-0160 to OAR 836-027-0180 and OAR 836-011-0440 to 836-011-0450, prior approval is required for any material transaction.

Civil Penalties

20. Pursuant to ORS 731.988(1), the Director may assess CIVIL PENALTIES against a person who violates any provision of the Insurance Code or any lawful rule of the Director.

ORDERS

The Director issues the following ORDERS:

21. As authorized by ORS 731.252(1), the Director ORDERS Respondents to CEASE AND DESIST from violating any provision of the Insurance Code or the administrative rules promulgated thereunder.

22. Based upon the foregoing and as authorized by ORS 731.988(1), the Director ORDERS that ZMI jointly pay a CIVIL PENALTY on behalf of itself and ZHP of \$150,000 as follows:

A. \$7,500 per violation for including the December Surplus Note with ZHP's annual statement in violation of ORS 731.574, ORS 750.045 and OAR 836-011-0000 as described in Paragraph 11 for a total CIVIL PENALTY of \$22,500.

B. \$7,500 per violation for not providing ZMI's 2015 audited financial statement on or before February 15, 2017 in violation of ORS 731.296, ORS 731.300 and ORS 732.584 as described in Paragraph 13 for a total CIVIL PENALTY of \$22,500.

C. \$7,500 per violation for not filing the Actuarial Opinion on or before March 1, 2017 in violation of ORS 731.574, OAR 836-011-0000, OAR 836-031-0640 and OAR 836-031-0670 as described in Paragraph 16 for a total CIVIL PENALTY of \$30,000.

D. \$7,500 per violation for not filing the Annual Statement – Risk Based Capital Report – Electronically with NAIC on or before March 1, 2017 in violation of ORS 731.574, OAR 836-011-0000 and OAR 836-011-0510 as described in Paragraph 17 for a total CIVIL PENALTY of \$22,500.

E. \$7,500 per violation for not filing the Annual Audited Financial Statement on or before June 1, 2017 in violation of ORS 731.488, ORS 731.574, OAR 836-011-0000 and OAR 836-011-0120 as described in Paragraph 18 for a total CIVIL PENALTY of \$30,000.

F. \$7,500 per violation for not obtaining prior approval for a material transaction in

violation of OAR 836-027-0160, OAR 836-027-0180 and OAR 836-011-0440 as described in Paragraph 19 for a total CIVIL PENALTY of \$22,500.

23. Based upon the foregoing and as authorized by ORS 731.988(1), the Director ORDERS that Dr. Sanders pay a CIVIL PENALTY of \$1,000 per day for the first 100 days after April 30, 2016 that the CPA-reviewed financial statement of Dr. Sanders were not included with the December 31, 2015 Holding Company Registration Filing of in violation of ORS 732.552(2) as described in Paragraph 14 for a total CIVIL PENALTY of \$100,000.

24. Based upon the foregoing and as authorized by ORS 731.988(1), the Director ORDERS that Dr. Albert DiPiero pay a CIVIL PENALTY of \$1,000 per day for the first 35 days after April 30, 2016 that the CPA-reviewed financial statement of DiPiero were not included with the December 31, 2015 Holding Company Registration Filing of in violation of ORS 732.552(2) as described in Paragraph 15 for a total CIVIL PENALTY of \$35,000.

25. The CIVIL PENALTIES assessed above are due and payable at the time this Consent Order is returned to the Division.

SO ORDERED this 13th day of October, 2017.

JEAN STRAIGHT, Acting Director
Department of Consumer and Business Services

/s/ Jean Straight

CONSENT TO ENTRY OF ORDER

I, Jean Straight, state that I am the Receiver of Zoom Health Plan, Inc. and I am authorized to act on its behalf. I have read the foregoing Consent Order, and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. Zoom Health Plan, Inc. voluntarily and without any force or duress consents to the entry of this Consent Order expressly waiving any right to a hearing in this matter. Zoom Health Plan, Inc. understands that the Director reserves the right to take further actions to enforce this Consent Order or to take appropriate action upon discovery of other violations of the Insurance Code, which violations occur after the date of this Consent Order. Zoom Health Plan, Inc. will fully comply with the terms and conditions stated herein.

Zoom Health Plan, Inc. understands that this Consent Order is a public document.

/s/ Jean Straight
Signature

Jean Straight
Printed name

Receiver
Office held

ACKNOWLEDGMENT

There appeared before me this 6th day of October, 2017,
Jean Straight, who was first duly sworn on oath, and stated that she/he
was and is the Receiver of Zoom Health Plan, Inc. and that she/he is authorized and empowered
to sign this Consent to Entry of Order on behalf of Zoom Health Plan, Inc. and to bind Zoom
Health Plan, Inc. to the terms hereof.

/s/ April Joy Mellen
Signature of Notary Public

CONSENT TO ENTRY OF ORDER

I, David Sanders, state that I am an officer of Zoom Management, Inc. and I am authorized to act on its behalf. I have read the foregoing Consent Order, and I know and fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter. Zoom Management, Inc. voluntarily and without any force or duress consents to the entry of this Consent Order expressly waiving any right to a hearing in this matter. Zoom Management, Inc. understands that the Director reserves the right to take further actions to enforce this Consent Order or to take appropriate action upon discovery of other violations of the Insurance Code, which violations occur after the date of this Consent Order. Zoom Management, Inc. will fully comply with the terms and conditions stated herein.

Zoom Management, Inc. understands that this Consent Order is a public document.

/s/ Dave Sanders
Signature

Dave Sanders
Printed name

CEO
Office held

ACKNOWLEDGMENT

There appeared before me this 6th day of October, 2017,
David Sanders, who was first duly sworn on oath, and stated that she/he
was and is an officer of Zoom Management, Inc. and that she/he is authorized and empowered
to sign this Consent to Entry of Order on behalf of Zoom Management, Inc. and to bind Zoom
Management, Inc. to the terms hereof.

/s/ Kari Simonsen
Signature of Notary Public

CONSENT TO ENTRY OF ORDER

I, Dr. Dave Sanders, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of my right to a hearing, and that I have been advised of my right to be represented by counsel in this matter; that I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order; that I understand that the Director reserves the right to take further actions against me to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code, which violations occur after the date of this Consent Order; and that I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

/s/ Dave Sanders
Signature of David Sanders

Dave Sanders
Printed name

Office held

State of
County of

Signed or attested before me this 6th day of Oct, 2017
by Dr. Dave Sanders.

/s/ Kari Simonsen
Notary Public

CONSENT TO ENTRY OF ORDER

I, Dr. Albert DiPiero, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of my right to a hearing, and that I have been advised of my right to be represented by counsel in this matter; that I voluntarily consent to the entry of this Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this Order; that I understand that the Director reserves the right to take further actions against me to enforce this Order or to take appropriate action upon discovery of other violations of the Insurance Code, which violations occur after the date of this Consent Order; and that I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

/s/ Albert DiPiero
Signature of Albert DiPiero

Albert DiPiero
Printed name

Office held

State of
County of

Signed or attested before me on this 6th day of Oct, 2017
by Dr. Albert DiPiero.

/s/ Kari Simonsen
Notary Public