

NEBRASKA DEPARTMENT
OF INSURANCE
FILED
JAN 16 2020

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

RECEIVED
JAN 16 2020

NEBRASKA DEPARTMENT
OF INSURANCE

STATE OF NEBRASKA)	
DEPARTMENT OF INSURANCE,)	CONSENT ORDER
)	
PETITIONER,)	
)	
VS.)	
)	
SONDRA S. WESTENBURG)	CAUSE NO. A-2201
(NAIC Producer #17850970),)	
)	
RESPONDENT.)	

In order to resolve this matter, the Nebraska Department of Insurance (“Petitioner”), by and through its attorney, Tracy A. Burns, and Sondra S. Westenburg (“Respondent”) mutually stipulate and agree as follows:

JURISDICTION

1. Petitioner has jurisdiction over the subject matter and Respondent pursuant to Neb. Rev. Stat. §§ 44.101.01, and 44-4047 to 44-4067.
2. Respondent has been licensed as a resident insurance producer under the laws of Nebraska at all times material hereto.

STIPULATIONS OF FACT

1. Petitioner initiated this administrative proceeding by filing a Petition captioned State of Nebraska Department of Insurance vs. Sondra S. Westenburg (NAIC National Producer #17850970), Cause Number A-2201 on December 3, 2019. A copy of the Petition was properly served upon the Respondent at her registered business and residence address by certified mail, return receipt requested, and by regular U.S. mail. Respondent acknowledges receiving proper Notice of these proceedings.

2. Respondent is alleged to have violated Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(g) and 44-4059(1)(h), as follows:

- a. Centers for Medicare and Medicaid (“CMS”) allow genetic testing for cancer. There are regulations regarding testing which state, in part, “all diagnostic tests must be ordered by the physician who is treating ... and who uses the results in management of the beneficiary’s specific medical problem. Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.”
- b. Between approximately November 1, 2018, and April 30, 2019, Respondent held educational meetings at senior living facilities, retirement communities and at the Art of Living Beyond Cancer Conference to promote genetic cancer testing via cheek swabs through MedVantage Consulting, LLC. Medical necessity for the testing was determined by an independent consultant for MedVantage Consulting, LLC. Those who consented to the genetic testing were not previously known by the independent consultant.
- c. On or about March 27, 2019, the Department promulgated a notice “Beware of Scam in Swabbing Cheeks of Seniors for DNA Cancer Checks.”
- d. On or about June 26, 2019, the Consumer Affairs Division of the Department requested information from Respondent regarding her role in cheek swabs of seniors for genetic cancer testing on behalf of MedVantage Consulting, LLC.
- e. On or about July 17, 2019, Respondent provided a written response which stated, in part, “MedVantage Consulting, LLC, was doing the very best possible to be in compliance with Medicare/Medicaid/Private Insurances to provide these FDA approved tests to the public.”

3. Respondent was informed of her right to a public hearing. Respondent waives that right and enters into this Consent Order freely and voluntarily. Respondent understands and acknowledges that by waiving her right to a public hearing, Respondent also waives her right to confrontation of witnesses, production of evidence, and judicial review.

4. Respondent neither admits nor denies the allegations related to Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(g) and 44-4059(1)(h).

CONCLUSIONS OF LAW

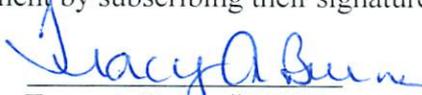
Respondent's conduct as alleged above constitutes violations of Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(g) and 44-4059(1)(h), and Respondent is subject to disciplinary action pursuant to Neb. Rev. Stat. §44-4059.

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondent, Sondra S. Westenburg, that:

1. Respondent agrees to pay an administrative fine of one thousand dollars (\$1,000) within ninety (90) days of the adoption of this Consent Order by the Director. If Respondent fails to pay the amount required under this consent order, within the time specified, Respondent's insurance producer license will be immediately suspended, and that said suspension shall continue indefinitely until the administrative fine is paid in full.
2. Respondent will cease and desist from all activities related to promoting and/or obtaining cheek swabs for genetic testing.

In witness of their intention to be bound by this Consent Order, each party has executed this document by subscribing their signatures below.



Tracy A. Burns #25398
Attorney for Petitioner
1135 M Street, Suite 300
Lincoln NE 68501
(402) 471-2201


Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consent Order was served upon Respondent by mailing a copy to her registered business and residence address at 72887 634 Ave., Auburn, NE 68305 by first class and certified mail, return receipt requested, on this 16th day of January, 2020.

Shelly Storie