

**BEFORE THE
DEPARTMENT OF MANAGED HEALTH CARE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CIGNA HEALTHCARE OF CALIFORNIA, INC.,

Respondent.

Enforcement Matter No. 11-049

OAH No. 2012040440

DECISION

This matter was heard on September 26 and 27, 2012, by Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Los Angeles, California.

James C. Haigh and Angela M. Lai, of the California Department of Managed Health Care (DMHC), represented the DMHC and Debra L. Denton, who brought the accusation in this matter, filed on November 21, 2011 (the Accusation), in her official capacity as Acting Assistant Deputy Director, Office of Enforcement, DMHC.

Curtis S. Leavitt, of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, and William S. Jameson, of Cigna Healthcare of California, Inc. (CIGNA), represented CIGNA.

Oral, documentary, and stipulated evidence was received on September 26 and 27, 2012. Three witnesses testified before ALJ Shrenger: Lyn Gage, clinical manager at the DMHC Help Center; Dr. Gregory Lizer, medical director for CIGNA; and Beth Fleck, national appeals liaison for CIGNA. Twenty-one exhibits were entered into evidence. The record was held open for post-hearing briefs, and the matter was submitted for decision on October 26, 2012.

ALJ Shrenger executed a proposed decision on August 1, 2013. On October 9, 2013, the Director of the DMHC notified the parties he would decide this matter on the record, pursuant to Government Code section 11517, subdivision (c)(2)(E). The DMHC submitted a supplemental brief on October 30, 2013, the deadline set by the Director for supplemental submissions under Government Code section 11517, subdivision (c)(2)(E)(ii). CIGNA submitted a supplemental brief, after the deadline, on October 31, 2013.

FINDINGS OF FACT

The DMHC filed the Accusation in this matter on November 21, 2011, under the authority conferred by the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act). The Accusation seeks an order assessing an administrative penalty of \$150,000 against CIGNA based on CIGNA's failure, on January 22, 2011, to have a representative with authority available to

resolve an urgent grievance and authorize the provision of health care services, in violation of California Code of Regulations, title 28, section 1300.68.01, subdivision (b)(1).

A. Stipulated Facts

The following facts were established by stipulation of the parties:

- a. At all times relevant hereto, CIGNA is and has been a health care service plan, licensed by the DMHC.
- b. At all times relevant hereto, CIGNA, as a DMHC licensee, is and has been subject to regulation by the DMHC.
- c. On or about April 1, 2009, CIGNA filed with the DMHC, in filing number 20090843, its Revised DMHC Contacts for Urgent Grievances.
- d. On or about February 15, 2011, CIGNA filed with the DMHC, in filing number 20110339, its Revised DMHC Contacts for Urgent Grievances.
- e. There were no other documents filed by CIGNA with the DMHC regarding CIGNA's Contacts for Urgent Grievances between April 1, 2009, and February 15, 2011.
- f. As of January 22, 2011, the pager number of (877) 562-0975 was the number designated by CIGNA to the DMHC as the Urgent Grievances after-hours contact number.
- g. As of January 22, 2011, the pager number at (877) 562-0975 was not displaying messages from Lyn Gage of the DMHC, nor were messages from Lyn Gage of the DMHC available for retrieval from this pager.

B. Other Evidence and Findings

On Saturday, January 22, 2011, Lyn Gage, clinical manager at the DMHC Help Center and registered nurse, was the on-call nurse for the DMHC. As an on-call nurse, Ms. Gage responds to telephone calls from consumers to the DMHC during non-business hours.

At approximately 12:30 p.m. on January 22, 2011, Ms. Gage received an anxious telephone call from Jane Doe. Jane Doe was calling on behalf of her 12-year-old daughter, a CIGNA enrollee,¹ who has cerebral palsy and mental retardation and who, after suffering a two-hour seizure and then a six-week coma, was set to be discharged from a rehabilitation facility. Jane Doe believed her daughter was not ready to be discharged because (1) she also suffers from severe renal disease that requires care, though she was not yet a candidate for dialysis, and (2) the necessary transition steps – such as arranging for physical therapy, equipment, renal care, and a visiting nurse – had not been taken.

¹ The CIGNA enrollee was Jane Doe's stepdaughter, not her biological daughter. For the purposes of this decision, that difference is irrelevant and the enrollee will be referred to as Jane Doe's daughter.

Jane Doe indicated she had filed an appeal with CIGNA on the previous day, Friday, January 21st, but did not know the status of the appeal. As of January 22nd, Ms. Gage understood that Jane Doe believed her daughter's discharge was imminent and, based on her conversation with Jane Doe, Ms. Gage believed the grievance was urgent.

Ms. Gage therefore called the telephone number CIGNA had designated for urgent after-hours grievances. She called four times, at 1:36 p.m., 1:52 p.m., 1:53 p.m., and 2:12 p.m. Ms. Gage received no responses to her calls, and the telephone number, which was for a pager,² allowed Ms. Gage to leave her phone number, but did not offer the option of leaving a voicemail message.

Between her last two calls to the pager, Ms. Gage left a voicemail message for Beth Fleck, national appeals liaison for CIGNA and one of CIGNA's designated contacts for urgent grievances, at Ms. Fleck's office telephone number. Then, after searching for more CIGNA telephone numbers, Ms. Gage eventually spoke to a CIGNA advice nurse at 2:33 p.m.³ The CIGNA advice nurse was initially unwilling to tell Ms. Gage anything about Jane Doe's daughter's situation, but Ms. Gage convinced the advice nurse to look at CIGNA's computer system, and learned the appeal was "still going." Ms. Gage then called Jane Doe to relay CIGNA's representation that the appeal was still in progress; Ms. Gage told Jane Doe to call Ms. Gage back if any move was made to discharge her daughter before Monday, January 24th.

Meanwhile, unbeknownst to Ms. Gage, Dr. Gregory Lizer, medical director for CIGNA, had performed case management for Jane Doe's daughter. As of Friday, January 21, 2011, Dr. Lizer had resolved Jane Doe's appeal, and extended Jane Doe's daughter's "last approved day" until January 24, 2011, meaning she would not actually be discharged until January 25th. However, when Ms. Gage contacted CIGNA on January 22nd, CIGNA did not make Ms. Gage aware of Dr. Lizer's decision to extend the discharge date until January 25th.

The pager Ms. Gage called on January 22nd was assigned to Ms. Fleck, as it had been since 2003 or 2004. Ms. Fleck kept the pager with her at all times, and used it only for receiving pages regarding CIGNA urgent grievances. She routinely tested the pager's batteries and made test calls to ensure the pager worked. When Ms. Fleck first got the pager, she knew it had previously received calls from California, but Ms. Fleck could not confirm she had received any California calls after that. The calls from Ms. Gage on January 22, 2011, did not display on the pager, though Ms. Fleck had the pager with her. Upon learning about the incident on Monday, January 24th, through the voicemail Ms. Gage had left Ms. Fleck on her office line, Ms. Fleck tested the pager, which appeared to work. However, when Ms. Fleck contacted the telecommunications carrier that serviced the pager, she learned the pager possibly no longer worked because it was "antiquated" and the company was phasing out coverage for pagers.

² Pagers are wireless telecommunications devices that, most commonly, receive and display numeric or text messages. (See <http://en.wikipedia.org/wiki/Pager>.) Popular until the 1990s, pagers have declined in use since the advent of cellular telephones. (See *id.*)

³ According to Ms. Gage, "advice nurses" are plan nurses available to respond to enrollee medical questions.

After learning about the January 22nd incident, CIGNA implemented an interim after-hours urgent grievance system, under which the DMHC could contact a designated CIGNA representative in California by cell phone. CIGNA sent the DMHC a letter on February 4, 2011, regarding the interim measure.⁴ Then, on February 15, 2011, CIGNA notified the DMHC regarding its permanent updated after-hours grievance system, which replaced the original pager with a cell phone with texting capability. The new cell phone had a different number than the pager, and CIGNA filed an amendment with the DMHC, pursuant to Health and Safety Code section 1352, subdivision (a), noting the new number.

LEGAL CONCLUSIONS

I. DMHC Enforcement Authority

The DMHC is charged with regulating managed health care in the State of California, and ensuring health care service plans comply with their obligations under the Knox-Keene Act. (Health & Saf. Code, §§ 1341(a) & 1345(f).) Health and Safety Code section 1386, subdivision (a), authorizes the Director of the DMHC, after appropriate notice and opportunity for a hearing, to assess administrative penalties, if the Director determines a health care service plan has committed “any of the acts or omissions constituting grounds for disciplinary action.” California Code of Regulations, title 28, section 1300.86, subdivision (a), provides, “[w]hen assessing administrative penalties against a health plan the Director shall determine the appropriate amount of the penalty for each violation of the [Knox-Keene] Act based upon one or more of the factors set forth [in the following subdivision].” Subdivision (b) lists 11 factors for determining an administrative penalty, and further provides that the factors that may be considered are not limited to the 11 enumerated factors.⁵

II. Evidentiary Standard

Administrative proceedings require that the evidence presented be reviewed under a preponderance of the evidence standard, pursuant to Evidence Code section 115, unless the statute governing the matter provides a different evidentiary standard. (See *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1892-1893 [58 Cal.Rptr.2d 571].) Neither the Knox-Keene Act nor the regulations at issue here – Health and Safety Code section 1368, Health and Safety Code section 1368.01, California Code of Regulations, title 28, section 1300.68.01,

⁴ In the February 4, 2011, letter from Rose Jung, Customer Advocate, CIGNA, to Andrew George, Deputy Director, DMHC Help Center, CIGNA indicated not only that it had implemented an interim after-hours system with a designated California representative, but also that it had replaced the non-working pager with a new pager using the same phone number as the non-working pager. However, Ms. Fleck testified that, as far as she knew, no new pager had been activated; she knew only about the interim system of having the DMHC contact a designated CIGNA representative in California for urgent after-hours grievances.

⁵ Specifically, California Code of Regulations, title 28, section 1300.86, subdivision (b), provides the factors to consider: (1) the nature, scope, and gravity of the violation; (2) the good or bad faith of the plan; (3) the plan’s history of violations; (4) the willfulness of the violation; (5) the nature and extent to which the plan cooperated with the Department’s investigation; (6) the nature and extent to which the plan aggravated or mitigated any injury or damage caused by the violation; (7) the nature and extent to which the plan has taken corrective action to ensure the violation will not recur; (8) the financial status of the plan (9) the financial cost of the health care service that was denied, delayed, or modified; (10) whether the violation is an isolated incident; and/or (11) the amount of the penalty necessary to deter similar violations in the future.

subdivision (b)(1), Health and Safety Code section 1386, and California Code of Regulations, title 28, section 1300.86 – provide an evidentiary standard. The preponderance of the evidence standard in Evidence Code section 115 therefore applies in this matter.

III. Failing to Have a Representative Available to Resolve Urgent Grievances and Authorize the Provision of Health Care Services Constitutes a Violation of California Code of Regulations, Title 28, Section 1300.68.01, Subdivision (b)(1)

A. The Parties' Arguments

At the hearing and in its hearing briefs, CIGNA argued that it did not violate California Code of Regulations, title 28, section 1300.68.01, subdivision (b)(1), as the regulation requires plans to maintain after-hours contact systems for urgent grievances and no urgent grievance existed on January 22, 2011, because Jane Doe's daughter's situation did not involve "an imminent and serious threat to the health of the patient, including, but not limited to, severe pain, potential loss of life, limb, or major bodily function." CIGNA further argued no violation occurred because Ms. Gage, of the DMHC, was able to reach a CIGNA advice nurse within one hour of her initial page to CIGNA's designated after-hours urgent grievance number. Finally, CIGNA argued the pager malfunction was not its fault, as CIGNA's telecommunications carrier had discontinued pager service without informing CIGNA, and CIGNA corrected the problem as soon as it learned about it.

The DMHC argued that an urgent grievance is not a predicate to finding a violation of California Code of Regulations, title 28, section 1300.68.01, subdivision (b), and that CIGNA's failure to maintain a functioning after-hours grievance system amounts to a violation in and of itself. The DMHC further argued, whether or not CIGNA caused its pager's failure on January 22, 2011, CIGNA was responsible for maintaining a functioning after-hours grievance system, which it failed to do by ensuring its system actually worked.

B. Analysis

The evidence establishes that CIGNA violated California Code of Regulations, title 28, section 1300.68.01, subdivision (b)(1). The parties stipulated that, on January 22, 2011, the pager with number (877) 562-0975 was CIGNA's after-hours urgent grievance contact number. The parties further stipulated that, on January 22, 2011, messages from Ms. Gage to the pager with number (877) 562-0975 were not being displayed on the pager. Ms. Gage testified, and her cell phone records demonstrate, that she called CIGNA's after-hours contact number, (877) 562-0975, four times between 1:36 p.m. and 2:12 p.m. on January 22nd, but received no response. On January 22, 2011, CIGNA did not have a functioning after-hours urgent grievance system, and did not provide the DMHC with an available representative with authority to resolve an urgent grievance and authorize the provision of health care services.⁶

CIGNA's arguments to the contrary are without merit. First, whether or not the grievance at issue was urgent is not determinative in this case; the unavailability of a CIGNA representative

⁶ The CIGNA advice nurse whom Ms. Gage eventually reached was not authorized to resolve urgent grievances or authorize the provision of health care services.

to the DMHC, which prevented the DMHC from contacting CIGNA, constitutes the violation. Also, CIGNA's own acts or omissions created the perception of urgency, because its medical director did not ensure that his disposition of the appeal was communicated to the enrollee's family. Second, Ms. Gage did not receive a response to any of her calls to CIGNA's designated urgent grievance number within the requisite hour. She was able, eventually, to reach a CIGNA advice nurse, but only through her own initiative. Finally, even if CIGNA's telecommunications carrier discontinued pager services in California without informing CIGNA, it was CIGNA's responsibility to ensure its after-hours urgent grievance system functioned so the DMHC could contact an after-hours CIGNA representative.⁷ The remaining issue is what administrative penalty is appropriate in light of CIGNA's violation.

IV. CIGNA's Violation Warrants an Administrative Penalty of \$150,000 Under California Code of Regulations, Title 28, Section 1300.86, Subdivision (b)

A. The Parties' Arguments

At the hearing and in its hearing briefs, CIGNA argued that \$150,000 was an excessive and unreasonable penalty, based on the 11 factors laid out in California Code of Regulations, title 28, section 1300.86, subdivision (b). It argued that any violation was minor, CIGNA acted in good faith, there is no evidence of a history of violations, CIGNA did not willfully commit a violation, CIGNA cooperated with the DMHC's investigation, no injury had occurred because of the violation, CIGNA has taken steps to ensure no similar incidents occur, CIGNA could pay \$150,000 but should not have to, there is no evidence regarding the financial cost of a health care service delayed, denied, or modified, the incident was isolated, and a \$150,000 penalty is unnecessary to deter similar conduct because CIGNA modified its urgent grievances system.

In its October 31, 2013, submission, CIGNA argued that because there was no urgent grievance, there is no basis for a \$150,000 administrative penalty. CIGNA further argued that the DMHC should apply the \$2,500 per day per violation limit found in Health and Safety Code section 1387, and fine CIGNA \$5,000 for a two-day violation from January 22nd to January 24th. CIGNA also argued it would be an abuse of discretion to set the administrative penalty at \$150,000, as such penalties are intended to protect the public, not punish offenders. Finally, CIGNA claimed its due process rights had been violated, because the Accusation brought an action against CIGNA for failing to have a representative with authority available to resolve an urgent grievance, not for failing to have a representative available to resolve any urgent grievances; CIGNA therefore did not craft its defense against the allegation it had failed, in general, to have a representative available.

At the hearing and in its hearing briefs, the DMHC argued, in setting the penalty, the ALJ or DMHC Director must consider the 11 factors set forth in California Code of Regulations, title 28, section 1300.86, subdivision (b). Further, the DMHC argued that agencies have discretion to set penalties and, under Evidence Code section 664, her decision to seek an administrative

⁷ By contrast, in its February 4, 2011, letter to the DMHC, CIGNA said the January 22nd incident occurred because its after-hours pager "was not functioning properly," insinuating that the pager was defective. CIGNA did not, at that point, indicate the problem was due to CIGNA's telecommunications carrier no longer providing service for pagers in California.

penalty of \$150,000 should be afforded deference because it can be presumed to have been done in the course of the DMHC's official duty. In its October 30, 2013, submission, the DMHC expounded on the 11 factors from California Code of Regulations, title 28, section 1300.86, subdivision (b), in particular pointing out the violation was very serious, CIGNA did not cooperate with the DMHC's investigation of the violation, CIGNA did not mitigate the problem, CIGNA has the financial means to pay a \$150,000 penalty, and such a penalty is necessary to ensure future violations do not occur. The DMHC also noted the DMHC did not abuse its discretion in seeking a \$150,000 penalty.

B. Analysis

In determining the amount of the administrative penalty, it is necessary to consider the evidence regarding each factor enumerated in California Code of Regulations, title 28, section 1300.86, subdivision (b)(1).

(1) The nature, scope, and gravity of the violation.

The "nature" and "gravity" of the matter should not be understated: Jane Doe believed her daughter, a child with multiple severe diagnoses who had recently suffered a six-week coma, was about to be discharged from the hospital before she was medically ready to be discharged and before any arrangements for her at-home care could be made. CIGNA's violation – not having the necessary system in place to respond to urgent grievances – could have put at risk the life of a seriously disabled 12-year-old girl. It is simply good fortune that it did not cause actual harm – other than the likely anxiety of the enrollee's mother and the waste of Ms. Gage's time and state resources – or endanger the life of any other CIGNA enrollee. Contrary to CIGNA's suggestion, the violation at issue was not minor. The administrative penalty should reflect the magnitude of the violation.

The "scope" of CIGNA's violation is unknown. The record contains no evidence regarding when CIGNA's telecommunications carrier stopped providing service for the pager at issue, though the discontinuation could have occurred days, weeks, months, or even years before the problem was discovered on January 22, 2011.

(2) The good or bad faith of the plan.

The record contains no evidence regarding good or bad faith on CIGNA's part.

(3) The plan's history of violations.

The record contains no evidence that CIGNA has a history of violations.

(4) The willfulness of the violation.

The record contains no evidence that the violation was willful.

(5) *The nature and extent to which the plan cooperated with the [DMHC's] investigation.*

In its February 4, 2011, letter to the DMHC, CIGNA indicated it had implemented an interim after-hours system by (1) providing the DMHC with the cell phone number of a designated California representative, and (2) replacing the non-working pager with a new pager. However, Ms. Fleck testified no new pager had been activated; she knew only about the system of having the DMHC contact a designated CIGNA representative in California for urgent after-hours grievances. No evidence was presented demonstrating that CIGNA made any attempt to correct the apparently inaccurate statement about the new pager. CIGNA did not therefore cooperate by accurately informing the DMHC about the status of its after-hours grievance system following the January 22nd incident.

Also, in its February 4th letter, CIGNA suggested the pager designated for after-hours grievances was “not functioning properly,” which suggested the pager was defective. At the hearing, however, CIGNA argued the original pager worked properly, but did not receive Ms. Gage’s calls because its telecommunications carrier no longer offered service for pagers in California. CIGNA therefore misled the DMHC regarding the cause of its failure to maintain an after-hours urgent grievance system, which could have affected the course of the DMHC’s investigation into the matter. Given these misrepresentations – regarding CIGNA’s interim measure and the precise nature of the problem with the pager – CIGNA did not cooperate with the DMHC’s investigation. The administrative penalty should reflect this failure to cooperate.

(6) *The nature and extent to which the plan aggravated or mitigated any injury or damage caused by the violation.*

The record contains no evidence regarding any injury or damage caused – or therefore aggravated or mitigated – by the violation.

(7) *The nature and extent to which the plan has taken corrective action to ensure the violation will not recur.*

The evidence demonstrates that CIGNA installed a permanent new after-hours grievance system in place as of February 15, 2011, and notified the DMHC regarding the new system as of that date. Prior to February 15, 2011, CIGNA said it had implemented an interim system “immediately,” or as of January 24, 2011. However, the evidence shows CIGNA only notified the DMHC of the interim system as of February 4, 2011, and then did so inaccurately. The administrative penalty should account for the fact that CIGNA did not make its corrective action known to the DMHC for 11 days, between January 24th and February 4th, and for the fact that CIGNA did not accurately report to the DMHC on the status of its interim measure. CIGNA’s argument that it took corrective action does not account for the delay or the misinformation.

(8) *The financial status of the plan.*

The evidence shows, for the year ending December 31, 2011, CIGNA had 230,399 enrollees, total revenue of approximately \$944 million, and total cash and short term investments of approximately \$72 million. CIGNA is therefore financially able to pay a \$150,000 administrative penalty.

(9) *The financial cost of the health care service that was denied, delayed, or modified.*

The record contains no evidence regarding any health care service being denied, delayed, or modified.

(10) *Whether the violation is an isolated incident.*

The record contains no evidence regarding the DMHC unsuccessfully attempting to reach CIGNA's after-hours urgent grievance system on any other occasion, though the system was likely non-functioning for some period prior to January 22, 2011.

(11) *The amount of the penalty necessary to deter similar violations in the future.*

Given the importance of plans maintaining functioning after-hours grievance systems, a significant fine would not only be commensurate with CIGNA's violation but also would deter future violations.

CIGNA, in couching its violation first as non-existent and then as minor, appears not to recognize the seriousness of its violation. Its failure to have a functioning after-hours grievance system put all CIGNA enrollees at risk; CIGNA was fortunate the circumstances that brought the problem to light did not develop into a dire situation seriously threatening the health of other CIGNA enrollees. A \$150,000 administrative penalty is therefore necessary, not as punishment, but to deter future violations by CIGNA, and by other plans.

California Code of Regulations, title 28, section 1300.86, subdivision (b), also provides that the factors an agency should consider when assessing administrative penalties are not limited to the 11 enumerated factors.

Ms. Gage, after attempting to reach CIGNA through its pager four times and leaving a message at Ms. Fleck's office number, eventually reached a CIGNA advice nurse. However, instead of offering to provide the assistance Ms. Gage required, CIGNA's nurse hesitated to look up the enrollee's appeal in CIGNA's system. Further, the advice nurse gave Ms. Gage inaccurate information: she told Ms. Gage Jane Doe's appeal was "still going," when in fact Dr. Lizer had resolved the appeal and moved the discharge date to January 25th. The misinformation may have resolved Ms. Gage's immediate concern, just as the correct information would have, but that was a lucky coincidence. It would also have been far better to alleviate the enrollee's mother's concerns by telling her that her daughter's discharge was not imminent. CIGNA's insufficient

and inaccurate response to Ms. Gage's eventual call to CIGNA's advice nurse should therefore also be considered in assessing the administrative penalty.⁸

Based on the foregoing, CIGNA shall be ordered to pay an administrative penalty in the amount of \$150,000.

⁸ CIGNA's argument that the DMHC should rely on the \$2,500 per day limit in Health and Safety Code section 1387, subdivision (a), is not viable. Section 1387, subdivision (a), which sets a limit for civil penalties, is not an appropriate guide for setting administrative penalties under Section 1386, subdivision (a). First, Section 1387, by its terms, applies only to civil penalties. In contrast, Section 1386, subdivision (a), pursuant to which the Office of Enforcement sought a \$150,000 penalty, provides that the DMHC may, at its discretion, assess administrative penalties, without any per-violation limit. As the California Supreme Court has said, "the Legislature certainly knows how to impose a penalty when it wants to . . ." (*Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal.4th 1094, 1108 [56 Cal.Rptr.3d 880].) By extension, the Legislature knows how to limit penalties when it wants to, and would have set a limit on administrative penalties, in Section 1386, subdivision (a), if it had wanted to, as it did in Section 1387, subdivision (a). Second, Section 1387, subdivision (b), provides the civil penalties allowed for in that section may be sought in conjunction with other civil remedies provided for in the Knox-Keene Act. This demonstrates the legislature did not contemplate the \$2,500 per-violation limit to be the full extent of a plan's liability under the Knox-Keene Act.

CIGNA's argument that its due process rights have been violated because it understood the Accusation to refer only to the specific situation on January 22nd, and not to the fact that it did not have a functioning after-hours grievance system, is also ill-conceived and non-sensical. Any reasonable reader would understand the Accusation alleged a violation of California Code of Regulations, title 28, section 1300.68, subdivision (b)(1), based on CIGNA's failure to provide an available representative with authority to make medical decisions, as discovered due to the January 22nd incident. Also, the Accusation alleged that CIGNA "failed to have a representative with authority available on the plan's behalf to resolve an urgent grievance and authorize the provision of health care services." The Accusation's use of the indefinite article, "an," demonstrates the issue was with CIGNA's general failure to maintain an after-hours system to deal with any urgent grievances. The definite article, "the," which the Accusation did not use, might have suggested to CIGNA it need only address the January 22nd situation in particular.

**BEFORE THE
DEPARTMENT OF MANAGED HEALTH CARE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

CIGNA HEALTHCARE OF CALIFORNIA, INC.,

Respondent.

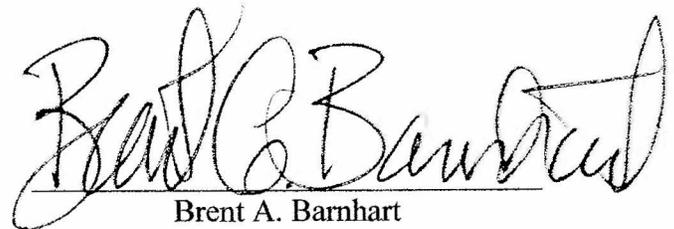
Enforcement Matter No. 11-049

OAH No. 2012040440

ORDER

Respondent Cigna Healthcare of California, Inc., due to its failure have a representative available to resolve urgent grievances and authorize the provision of health care services, in violation of California Code of Regulations, title 28, section 1300.68.01, subdivision (b)(1), shall pay to the Department of Managed Health Care an administrative penalty in the total amount of \$150,000. Payment in full shall be made within 30 days of the effective date of this Decision and Order, as directed by the Department of Managed Health Care.

Date: November 20, 2013



Brent A. Barnhart
Director, Department of Managed Health Care



PROOF OF SERVICE

In the Matter of Cigna Healthcare of California, Inc.
OAH No. 2012040440

I declare:

I am an attorney at the Department of Managed Health Care, in Sacramento County, California, and am an active member of the California State Bar. I am 18 years of age or older and am not a party to this matter. I am familiar with the business practice at the Department of Managed Health Care for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Department of Managed Health Care is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 21, 2013, I served the attached **Decision and Order** by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid and sent via registered mail, in the internal mail collection system at the Department of Managed Health Care at 980 9th Street, Suite 500, Sacramento, California 95814-2738, addressed as follows:

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William S. Jameson
Cigna Healthcare of California, Inc.
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Glendale, CA 91203

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 21, 2013, at Sacramento, California.

HON CHAN (Printed Name)

 (Signature)