

**BEFORE THE INSURANCE COMMISSIONER OF THE
STATE OF OKLAHOMA**

FILED
MAY 13 2016
INSURANCE COMMISSIONER
OKLAHOMA

STATE OF OKLAHOMA, <i>ex rel.</i> JOHN D.)	
DOAK, Insurance Commissioner,)	
Petitioner,)	
vs.)	
)	Case No. 16-0416-DIS
KROGER PRESCRIPTION PLAN, INC., a)	
licensed pharmacy benefits manager doing)	
business in the State of Oklahoma,)	
Respondent.)	

CONDITIONAL ADMINISTRATIVE ORDER
AND NOTICE OF RIGHT TO BE HEARD

COMES NOW the State of Oklahoma, *ex rel.* John D. Doak, Insurance Commissioner, by and through his counsel, Sara A. Worten, and alleges and states as follows:

JURISDICTION AND AUTHORITY

1. John D. Doak is the Insurance Commissioner of the State of Oklahoma and as such is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, 36 O.S. §§ 101 et seq., including the regulation of Pharmacy Benefits Managers (“PBM”), 59 O.S. §§ 357-360.
2. Respondent Kroger Prescription Plan, Inc. (“Respondent” or “Kroger”) is a licensed PBM doing business in the State of Oklahoma.
3. Pursuant to OKLA. ADMIN. CODE 365:25-29-10(a), the Insurance Commissioner may suspend, revoke or refuse to issue or renew a pharmacy benefits manager license and/or may levy a civil fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each violation of 59 O.S. §§ 357-360.

FINDINGS OF FACT

1. In accordance with 59 O.S. § 358(B), the Oklahoma Insurance Department (“OID” or

the “Department”) established by regulation the required disclosure for PBMs as necessary in carrying out and enforcing provisions of the Pharmacy Benefits Act.

2. OKLA. ADMIN. CODE 365:25-29-8 requires that a PBM shall submit a report of its financial condition with OID on or before March 1 of each year. The Commissioner may extend the time for filing the annual report for good cause shown but shall not extend the time for filing annual statements beyond sixty (60) days

3. On or about February 11, 2016, the Department sent an email to Kroger providing instruction on how and where to file its annual report of its financial condition.

4. On March 9, 2016, a second email was sent to Kroger stating OID has not received Respondent’s annual financial report. The Department instructed Respondent the report was due within fifteen (15) days from the date of the email.

5. The Department has yet to receive Kroger’s annual financial report.

ALLEGED VIOLATIONS OF LAW

1. Respondent has violated OKLA. ADMIN. CODE 365:25-29-8 for failing to timely file its PBM annual financial report with the Department.

ORDER

IT IS THEREFORE ORDERED that Respondent Kroger Prescription Plan, Inc. has violated OKLA. ADMIN. CODE 365:25-29-8 and is therefore is **FINED** Five Hundred Dollars (\$500.00). The \$500.00 civil fine shall be paid by money order or cashier’s check made payable to the Oklahoma Insurance Department. Failure to pay the civil fine may result in further administrative action being taken against Respondent’s license.

IT IS FURTHER ORDERED that Respondent Kroger Prescription Plan, Inc. has thirty (30) days from the issuance of this Order to submit its annual financial report to the Department. Failure to submit an annual financial report will result in further administrative action being taken against Kroger's license.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Insurance Commissioner that this Order is a Conditional Order. Unless the Respondent requests a hearing with respect to the Allegations of Fact set forth above within thirty (30) days of the date of mailing of this Order, this Order and the penalties set forth above shall become a Final Order on the thirty-first day following the date of mailing this Order. A request for hearing should be in writing addressed to Sara A. Worten, Oklahoma Insurance Department, Legal Division, 3625 NW 56th St., Suite 100, Oklahoma City, Oklahoma 73112. The request for hearing must state the grounds for the request to set aside or modify the Order.

Any such hearing shall be conducted according to the procedures for contested cases under the Insurance Code and 75 O.S. § 250-323. If the Respondent serves a timely request for hearing on the Oklahoma Insurance Department, this Conditional Order shall act as notice of the matters to be reviewed at the hearing, and the Allegations of Fact, Alleged Violations of Law, and penalties imposed in this Conditional Order shall be considered withdrawn, pending final resolution at the hearing.

WITNESS My Hand and Official Seal this 13th day of May, 2016.



JOHN D. DOAK
INSURANCE COMMISSIONER
STATE OF OKLAHOMA



Sara A. Worten
Assistant General Counsel
3625 NW 56th Street, Suite 100
Oklahoma City, Oklahoma, 73112
Tel. (405) 522-6350

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing *Conditional Administrative Order and Notice of Right to Be Heard* was mailed certified, return receipt requested, on this 13th day of May, 2016, to:

Kroger Prescription Plan, Inc.
1014 Vine Street
3rd Floor
Cincinnati, Ohio 45202

**CERTIFIED MAIL NO:
7015 3010 0001 4736 6433**

Copy to: DeAnn Robinson, APIR
Financial Division
Oklahoma Insurance Department



Sara A. Worten

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Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

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Street and Apt. No., or PO Box _____

City, State, ZIP+4® _____

Kroger Prescription Plan, Inc.
 1014 Vine Street, 3RD Floor
 Cincinnati, OH 45202
16-0416-DIS/SAW(mt)
(Cond.Adm.Ord. & Notice-5-13-16)

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

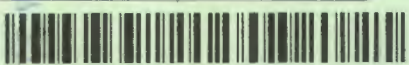
7015 3010 0001 4736 6433

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kroger Prescription Plan, Inc.
 1014 Vine Street, 3RD Floor
 Cincinnati, OH 45202
16-0416-DIS/SAW(mt)
(Cond.Adm.Ord. & Notice-5-13-16)



9590 9402 1346 5285 6030 56

2. Article Number (Transfer from service label)

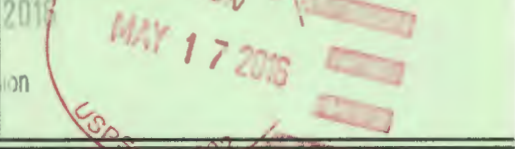
7015 3010 0001 4736 6433

COMPLETE THIS SECTION ON DELIVERY

A. Signature *John Chesley* Agent Addressee

B. Received by (Printed Name) *John Chesley* C. Date of Delivery _____

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 If YES, enter delivery address below: _____



3. Service Type

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Collect on Delivery Signature Confirmation™

Collect on Delivery Restricted Delivery Signature Confirmation Restricted Delivery

Insured Mail Signature Confirmation Restricted Delivery (over \$500)

Insured Mail Restricted Delivery (over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt