

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

STATE OF OKLAHOMA, ex rel.)	
GLEN MULREADY, Insurance)	
Commissioner,)	
)	
Petitioner,)	
)	Case No. 22-0300-DIS
v.)	
)	
EXAMPLE PBM, a company doing)	
business in the State of Oklahoma,)	
)	
Respondent.)	
)	

A FICTIONAL ADMINISTRATIVE HEARING – PROCEDURE EXAMPLE

THE COURT: Okay. We're on the record in state of Oklahoma, ex rel., Glen Mulready, Insurance Commissioner versus Example PBM, a company doing business in the State of Oklahoma, case No. 22-0300-DIS. Today is April 25, 2022. Would counsel please make their presence known?

Ms. Price: Kelli Price for the State of Oklahoma, Oklahoma Insurance Department.

Mr. Doe: John Doe for Example PBM.

THE COURT: As we briefly talked about before the hearing started, the rules of evidence are relaxed. This is an administrative proceeding. So, if there's any question, feel free to ask it. If you have any need to take a break for any reason at all, we can do that. We've got all day. So, with that, Ms. Price, you may make your opening statement.

Ms. Price: *[State makes opening statement giving brief overview of the purpose of today's hearing, establishing the burden of proof, and outlining the facts. This is each party's opportunity to set the basic scene, introduce the Commission to the core dispute(s) in the case, and provide a general road map of how the hearing is expected to unfold.]*

THE COURT: Thank you. Mr. Doe, you may make an opening statement.

Mr. Doe: *[Respondent's Counsel makes opening statement giving brief overview of the purpose of today's hearing, establishing the burden of proof, and outlining the facts. This is each party's opportunity to set the basic scene, introduce the Commission to the core dispute(s) in the case, and provide a general road map of how the hearing is expected to unfold.]*

THE COURT: Thank you. Ms. Price, you may call your first witness.

Ms. Price: The State calls Sherry Superior. *[Witness moves to the witness seat/stand]*

THE COURT: Please raise your right hand. *[PAUSE]* Do you swear to tell the truth, the whole truth and nothing but the truth?

Sherry Superior: I do.

THE COURT: Very good. Thank you. Counsel, you may proceed.

[DIRECT EXAMINATION]

Ms. Price: Please state and spell your full legal name for the record.

Sherry Superior: Sherry Superior

Ms. Price: And where are you currently employed?

Sherry Superior: Oklahoma Insurance Department.

Ms. Price: What is your job title at the Department?

Sherry Superior: I am the division manager of regulated industry services.

Ms. Price: What duties do you perform in your current job at the Department?

Sherry Superior: I oversee the license applications for entities that are engaged in pharmacy benefits management.

[Q & A continues – the Commission may also interject questions, sustain or overrule objections, admit or deny evidence, etc.]

Q Please take a look at what's been marked as Petitioner's Exhibits 1 and 2. And let us know whether or not you recognize those documents.

A Yes.

Q What are these documents?

A Exhibit 1 is an e-mail from Ms. Crude. And then Exhibit 2 is the electronic filing notice.

Q And who sent the e-mail in Exhibit 1?

A I sent the original e-mail and Ms. Crude responded.

Q And what e-mail address was it sent to?

A bestaddress@email.com

Q And what was the date of that e-mail?

A December 7.

Q And the second document, Exhibit 2' was that an attachment to the e-mail?

A Yes.

Q Is this e-mail in response to anything?

A Ms. Crude had called me asking for a status on Example PBM's application.

Q And how did you have this e-mail address for Ms. Crude?

A I got that over the phone I believe.

Ms. Price: Your Honor, I would request that Petitioner's Exhibit 1 and 2 be admitted into evidence.

THE COURT: Mr. Doe, any objection?

Mr. Doe: No.

THE COURT: Show Exhibits 1 and 2 admitted without objection.

Ms. Price: Thank you Ms. Superior. Your Honor, I have no other questions.

THE COURT: Okay. Mr. Doe, you can cross-examine.

[CROSS-EXAMINATION]

Mr. Doe: Ms. Superior, we're meeting for the first time. I'm John Doe. I represent Example PBM in this case. I've got some follow-up questions for you. How long have you been responsible for reviewing or approving these kinds of applications?

A Since January 24th, 2019.

[Q & A continues – the Commission may also interject questions, sustain or overrule objections, admit or deny evidence, etc.]

Mr. Doe: Move the admission of Exhibit 8, please.

Ms. Price: No objection, Your Honor.

THE COURT: Show Respondent's Exhibit No. 8 admitted without objection.

Mr. Doe: **I pass the witness.**

THE COURT: Any redirect?

Ms. Price: Yes, Your Honor.

THE COURT: Okay. You may proceed.

[REDIRECT EXAMINATION]

Ms. Price: Ms. Superior, regarding the Crudes, have they contacted you on many occasions regarding this application?

A Yes.

Q Is it your understanding that the pharmacy was reaching out because of the Crudes?

Mr. Doe: She doesn't have a foundation for that question.

THE COURT: Are you withdrawing it or are you standing on the question?

Ms. Price: I'll stand on the question.

THE COURT: Okay. Overruled. You can answer.

Ms. Price: If you are aware, was the pharmacy was reaching out was because of the Crudes?

A Yes.

Ms. Price: No further questions, Your Honor.

THE COURT: Mr. Doe, recross?

Mr. Doe: Yes, sir, I do.

[REXCROSS-EXAMINATION]

Mr. Doe: You said it would not be appropriate if somebody lies. Is that your testimony?

A Yes.

Q And would you agree with me that if somebody lies, they have to have an intent for it to be a lie?

A No.

Q Oh, you can lie by mistake?

A You can.

Q Okay. And that's what you meant by lying when you answered Ms. Price's question?

A I don't know what the person's intent is when they're filling it out.

Q But you looked at the fact that the box had been checked, and you denied the application for mistatement; correct?

A correct.

Q And that was it?

A Yes.

Mr. Doe: Okay. No further questions.

THE COURT: Okay. Thank you Ms. Superior. You are excused. You may step down. Let's take a break. We've been going for about an hour and a half.

[Following a short recess, proceedings continue on the Record]

THE COURT: All right. We are back on the record state of Oklahoma, ex rel, Glen Mulready, Insurance Commissioner versus Example PBM, a company doing business in the State of Oklahoma, case No. 22-0300-DIS after a short break. Just a little housekeeping item, we got copies of the e-mail that was discussed earlier by Ms. Superior that she testified to. We've marked that as Respondent's Exhibit 17, and we will show that's admitted without objection. Correct?

Mr. Doe: Yes.

THE COURT: And, Ms. Price?

Ms. Price: Yes.

THE COURT: Okay. Ms. Price, you may call your next witness.

Ms. Price: My next witness is Happy Harold.....

[Next witness is sworn in by the Court]

THE COURT: Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth?

Mr. Harold: Yes, Sir.

THE COURT: All right. You may inquire.

[Direct Examination, Cross, Re-direct, and Re-cross proceed as above]

[CLOSING ARGUMENTS - *Once all witness examinations are concluded, the Court offers to allow counsel for each side to give a closing statement. Either or both sides may waive their opportunity to make a closing argument. Petitioner's counsel goes first followed by Respondent's counsel.***]**

[CONCLUSION - *After both sides conclude, the court may issue its ruling, take the matter under advisement, ask the parties to brief any remaining issues, instruct the parties to prepare a Journal Entry in accordance with the Court's order, set the matter for further hearing, etc.***]**

[RULING - *The Court announces its findings and conclusions of law and imposing fines, penalties, and/or costs*]

THE COURT: This hearing examiner, after listening to the testimony and evidence presented, find clear and convincing evidence that during the time period from [date] to [date], Example PBM engaged in the business of insurance in this State without a license in violation of Title 36 of the Oklahoma Statutes, section 6103.2 and 6103.3. Further, this Court finds clear and convincing evidence that during the time period from [date] to [date], Example PBM acted as a Pharmacy Benefits Manager in this state without proper licensure in violation of Title 36 sections 109 and 6103.3 (B) and Title 59 section 358 (A) of the Oklahoma Statutes. Therefore, this Court orders that, within 30 days of today's date, Example PBM shall pay to the State of Oklahoma, Oklahoma Insurance Department 3 **fines in the total amount of \$X**. Also, within 30 days of today's date, Example PBM shall pay **restitution to the affected pharmacies through their respective representative PSAOs in the total amount of \$**, which shall be distributed to the pharmacies proportionately and in accordance with the claim amounts alleged in the complaints related to this matter. Finally, Example PBM **shall pay court costs and attorney fees to the State of Oklahoma** upon proper application by the State.

The State will draft a final Administrative Order and Journal Entry with required findings of fact and conclusions of law in accordance with this Court's Order and submit it to me and to opposing counsel within fifteen days of today's date. If counsel for Respondent doesn't sign the proposed Journal Entry as drafted by the State, then a hearing to settle the Journal Entry will be set on the next available docket day, which is July 21, 2022 at 10:00 a.m. If the Journal Entry is not signed by both parties and submitted to me prior to July 21, 2022, please plan to be here on that date. Is there anything further from Ms. Price?

Ms. Price: No, Your Honor.

THE COURT: Mr. Doe, do you have anything further?

Mr. Doe: No, Your Honor.

THE COURT: Okay. I believe that concludes this matter. Thank you all. This matter is adjourned and we are off the record.

Mr. Doe: Thank you. Your Honor.

Ms. Price: Thank you, Your Honor.