

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

In the Matter of:

CASE NO: CI 15-23226

OMAHA OPPORTUNITIES
INDUSTRIALIZATION CENTER,

ASSURANCE
OF
VOLUNTARY COMPLIANCE

Respondent.

PREAMBLE

This Assurance of Voluntary Compliance (hereinafter Assurance) is entered into by the State of Nebraska by and through Douglas J. Peterson, the Attorney General, and the undersigned Assistant Attorney General, and by the Omaha Opportunities Industrialization Center, acting pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2).

PARTIES

1. **Respondent:** Omaha Opportunities Industrialization Center (hereinafter "OOIC") is a domestic Nebraska nonprofit public benefit corporation, which is a registered corporation with the Nebraska Secretary of State with active status. OOIC is located at 2724 N 24th Street, Omaha, Nebraska. OOIC has transacted and continues to transact business in the State of Nebraska by offering training and education programs, including an education program for consumers to become listed on the Certified Nursing Assistant (hereinafter CNA) registry. For the purposes of this Assurance, Respondent also means anyone acting on behalf of, or in concert or participation with, OOIC, directly or indirectly, including owners, members,

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principals, directors, officers, agents, representatives, salespersons, employees, instructors, independent contractors, affiliates, successors, transferees, assignees, and all other persons or corporate devices, partnerships, associations, or other business entities.

2. **Relator:** Douglas J. Peterson is the duly elected, qualified, and acting Attorney General of the State of Nebraska. Relator commenced an investigation into the business practices of Respondent in the State of Nebraska based on reasonable cause to believe that Respondent has engaged in business practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter Consumer Protection Act), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (hereinafter Uniform Deceptive Trade Practices Act).

3. **Parties:** Relator and Respondent shall be collectively referred to as “the Parties” throughout this Assurance.

AUTHORITY, VENUE, JURISDICTION, AND CHOICE OF LAW

4. In the enforcement of the Consumer Protection Act, Relator may accept an assurance of discontinuance of any act or practice deemed in violation of the Consumer Protection Act pursuant to Neb. Rev. Stat. § 59-1610. Furthermore, pursuant to § 87-303.05(2), when the Relator has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, Relator may accept an assurance of discontinuance of any deceptive trade practice or unconscionable act listed in Neb. Rev. Stat. §§ 87-302 or 87-303.01 and § 87-303.05(2) (an assurance of discontinuance is also known as an assurance of voluntary discontinuance, assurance of compliance or assurance of voluntary compliance).

5. The Parties hereby agree that venue regarding the interpretation or enforcement of this Assurance is before the District Court of Lancaster County, Nebraska (hereinafter Court)

pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1610, and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-303.05; that the Court has subject matter jurisdiction over this matter; that the Parties herein submit to the personal jurisdiction of the Court; that the Court retains jurisdiction regarding the interpretation and enforcement of this Assurance; and that the laws of the State of Nebraska control and apply to the interpretation and enforcement of this Assurance.

RECITALS

6. IT NOW APPEARS THAT, for the sake of judicial efficiency and preservation of resources, the Parties are willing to voluntarily enter into this Assurance in order to avoid the costs and uncertainty of litigation.

7. IT FURTHER APPEARS THAT, Relator, acting on behalf of the general welfare of the public and citizenry of the State of Nebraska, is willing to accept this Assurance in lieu of bringing formal action against Respondent, provided the following provisions contained herein are fully complied with and met by Respondent.

8. THEREFORE, IT IS HEREBY AGREED by the Respondent that the following assurances are made and will be complied herewith as of the date of Court approval of this Assurance:

ASSURANCES

9. Respondent shall not engage in any unfair methods of competition, or unfair, deceptive or unconscionable acts or practices in the conduct of any trade or commerce in violation of the Consumer Protection Act.

10. Respondent shall not engage in any deceptive trade practice or unconscionable act in violation of the Uniform Deceptive Trade Practices Act.

11. Respondent shall not represent, in any way—either through written statement,

oral statement, or through omission—that a class, training or other certification program will provide the consumer, upon completion, with certification, when in fact Respondent doesn't actually have a license, accreditation, or other required approval for the class, training or other certification program.

12. Respondent shall submit the required paperwork for a license, accreditation, or other required approval for any class, training or other certification program, in a timely fashion, ahead of all deadlines, and without seeking extensions, if applicable. This includes, but is not limited to, the following required paperwork for CNA certification:

- a. The annual Authorization to Operate with the Nebraska Department of Education;
- b. All required filings for five-year accreditation with the Nebraska Department of Education; and
- c. All required filings for curriculum approval and certification with the Nebraska Department of Health and Human Services.

13. Paragraph 12 shall not apply in the event that Respondent's Board of Directors elects, through resolution or other legitimate corporate action in advance of any deadline for filing the required paperwork, to discontinue the applicable class, training, or certification program.

14. A minimum of three of Respondents' directors shall attend a minimum of two educational training sessions for each calendar year 2015, 2016 and 2017, of duration not less than one (1) hour in length for each session, whose purpose and/or curriculum is or substantially concerns nonprofit law, nonprofit governance, nonprofit ethics, nonprofit oversight, or nonprofit management.

CONSUMER RESTITUTION

15. As of the date of execution of this Assurance by both Parties, Respondent has paid restitution to consumers who attended CNA certification classes/program at OOIC from January through March, 2014 (hereinafter Affected Consumers), during which time OOIC was not properly licensed and or/accredited in regard to its CNA certification classes/program. Each Affected Consumer—or government agency or other entity who may have paid the tuition costs for the Affected Consumer through grant, scholarship or other means—has received a full refund of all amounts paid to Respondent.

16. Respondent has provided Relator with proof of all who have received restitution according to Paragraph 15, including check numbers associated with each refund recipient, as well as proof that the check was cashed by said refund recipient.

17. If either the Respondent or Relator becomes aware of any consumer who attended CNA certification classes/program at OOIC from January through March, 2014, and who has not received a full refund, the Party privy to this information must promptly notify the other Party. If adequate proof is provided of said attendance and non-receipt of a full refund to the reasonable satisfaction of both the Respondent and the Relator, Respondent shall pay a full refund to the consumer within 15 days of prompt verification by both Parties. Respondent shall further provide proof of paying said full refund by providing Relator with the check number associated with the refund recipient, as well as proof that the check was cashed by said refund recipient.

SCHOLARSHIPS AND MONETARY PAYMENT

18. By January 1, 2016, Respondent shall provide a total of five (5) scholarships, based on merit, need, or some combination thereof, for the CNA certification program at OOIC. The recipients of said scholarships shall: (1) be entitled to attend all classes in the CNA

certification program, (2) have all costs of attending all classes in the CNA certification program paid for, and (3) be eligible for placement on the CNA registry upon successful program completion. Should the CNA certification program no longer be offered prior to dissemination of all 5 scholarships, Respondent shall provide the remaining scholarships to consumers enrolled in another program, worth a similar value, and approved by the Respondent.

19. Respondent shall pay ten thousand dollars (\$10,000) to the Relator if, within five (5) years of Court approval of this Assurance, Respondent violates any of the provisions of this Assurance, without curing said violation to the satisfaction of the Relator. Funds collected pursuant to this paragraph, should they become due and owed, shall be placed in the State Settlement Cash Fund for such purposes that may include, but are not limited to, defraying the costs of the inquiry leading hereto, attorneys' fees and other costs of investigation and litigation, consumer protection enforcement, consumer education, or for other uses permitted by state law. The Parties acknowledge that any payment made pursuant to this paragraph is not a fine or penalty, or payment in lieu thereof. This in no way limits any other action or proceeding that can be brought by Relator pursuant to law.

REPORTING

20. Respondent shall generate, retain and make readily available to Relator for inspection, upon reasonable notice and without the necessity of a subpoena, civil investigative demand or other legal process, all material records and documents reasonably necessary to document compliance with this Assurance. Specifically:

- a. Proof of compliance with Paragraph 14 shall be provided to the Relator by December 31st of each year 2015, 2016, and 2017, and upon request by the Relator.
- b. Proof of compliance with Paragraph 18 shall be provided to Relator upon

provision of all 5 scholarships, but in no case after January 10, 2016. Said proof shall contain a list of the names and contact information of each recipient, the reasons each scholarship recipient was chosen, the scholarship value, and the specific program dates that the scholarship recipient received the scholarship to attend. In addition, Respondent shall supply Relator with a progress report outlining the current progress OOIC has made toward awarding all 5 scholarships by September 18, 2015. Said progress report shall include a list of the names and contact information of each recipient awarded as of the report date, the reasons each scholarship recipient was chosen, the scholarship value, and the specific program dates that the scholarship recipient received the scholarship to attend.

21. All reporting under this Assurance shall be sent by first class mail to the following address:

Office of the Attorney General
Attn: Daniel Russell
Consumer Protection Division
2115 State Capitol
Lincoln, NE 68509-8920

GENERAL PROVISIONS

22. This Assurance constitutes a complete settlement and release by the Relator of all civil claims and causes of action against Respondent relating to consumer complaints that existed as of the date the Court approves this Assurance and that could have been asserted by the Relator, either individually or collectively with the Attorneys General of other states, under the Consumer Protection Act or the Uniform Deceptive Trade Practices Act. This does not affect a consumer's private right of action, or the Relator's right to use the complaints for any and all contempt actions, or other actions arising out of violation of this Assurance, should any occur in

the future.

23. This Assurance is made and entered into without trial or finding of fact or conclusions of law by a court. This Assurance does not constitute evidence against or an admission by Respondent of any issues of fact or any violations of law in the past or that Respondent has engaged in any inappropriate activities or other wrongdoing, and shall not be used in a manner inconsistent with these terms.

24. Nothing in this Assurance shall be construed so as to limit or bar any other person or entity from pursuing any and all available legal remedies against Respondent; nor is it the intent of the Parties hereto that this Assurance shall create or support a cause of action against Respondent by non-parties to this Assurance.

25. Nothing in this Assurance shall be construed as relieving Respondent of the obligation to comply with any and all federal, state and local laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed a waiver or permission to engage in any act or practice prohibited by law, regulation or rule. This Assurance is subject to all applicable federal, state and local laws, regulations and rules.

26. Respondent understands that this Assurance shall not be construed as an approval of or sanction by the Relator of the Respondent's business practices, nor shall the Respondent represent the Assurance as such approval. The Parties further understand and agree that any failure by the Relator to take any action in response to any information submitted pursuant to this Assurance shall not be construed to be an approval of or sanction of any representations, acts, or practices of the Respondent, nor shall any inaction by the Relator be considered a waiver by the Relator of any rights under this Assurance or the law.

27. If any portion, provision, or part of this Assurance is held to be invalid,

unenforceable or void for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions or parts.

28. In the event any more restrictive law, regulation or order is enacted, adopted or issued by the federal government, the State of Nebraska or any of its agencies, any relevant local government or a court of competent jurisdiction with respect to any issue specifically covered by this Assurance, the requirements of such law, regulation or order, after written notice by Respondent to the Relator, shall replace any provision contained herein so that compliance with such law, regulation or order shall be deemed compliance with this Assurance.

29. Pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2), proof of failure to comply with the Assurance shall be *prima facie* evidence of a violation of applicable Nebraska statutes in any civil action or proceeding hereafter commenced by the Relator against Respondent.

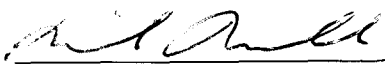
WHEREFORE, each undersigned representative of the Relator and Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Assurance and legally bind such Party to its terms. The following signatures are affixed hereto as of the dates written below in agreement hereof.

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

FOR RELATOR:

THE STATE OF NEBRASKA, ex rel.
DOUGLAS J. PETERSON, Attorney General

By: Douglas J. Peterson, Attorney General, No. 18146

By: 
Daniel Russell, No. 25302
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509-8920
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Fax: (402) 471-4725
daniel.russell@nebraska.gov

8/28/15
Date

Counsel for the State of Nebraska

FOR OMAHA OPPORTUNITY INDUSTRIALIZATION CENTER:

By: Alan Black 8-14-15
Date
Alan Black
Director
Omaha Opportunity Industrialization Center

By: Dr. Bobbie A. Davis 8/14/15
Date
Dr. Bobbie A. Davis
Director
Omaha Opportunity Industrialization Center

By: Lindsey Deberry 8/14/15
Date
Lindsey Deberry
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By: Dr. Cynthia Jenkins 8/14/15
Date
Dr. Cynthia Jenkins
Director
Omaha Opportunity Industrialization Center

By: Alfonzo Robinson 8/14/2015
Date
Alfonzo Robinson ~~Alfonzo Robinson~~
Director
Omaha Opportunity Industrialization Center