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Attorneys for Complainant

FILED
APR 14 2005
DEPARTMENT OF MANAGED HEALTH CARE
By _____
Filing Clerk

BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE

OF THE STATE OF CALIFORNIA

IN THE MATTER OF: AFFORDABLE HEALTH CARE SOLUTIONS, INC., DBA CONTINENTAL HEALTH CARE, Respondent.	DMHC No.: 04-373 OAH No.: **ORDER REINSTATING CEASE AND DESIST ORDER AND TERMINATING ITS SUSPENSION; NOTICE OF RIGHT TO HEARING**

TO: AFFORDABLE HEALTH CARE SOLUTIONS, INC.

The Director of the Department of Managed Health Care, by and through her designee, Assistant Deputy Director, Amy L. Dobberteen, makes the following order reinstating the Cease & Desist Order issued on December 10, 2004 and terminating its suspension forthwith.

This Order is based on Respondent's failure to comply with the terms and provisions of the INTERIM ORDER SUSPENDING CEASE AND DESIST ORDER issued on March 4, 2005. In particular:

1. Respondent failed to take the necessary preliminary steps to filing an application for licensure under the Knox-Keene Health Care Service Plan Act of 1975, Health & Safety Code sections 1340 *et seq.*, as required by paragraph 1.A. of that Order, in that it failed to schedule and complete the

Department's electronic filing training course on or before April 1, 2005, as directed by paragraph 1.A.1.

2. Respondent failed to immediately implement the operational changes necessary and sufficient for full compliance with the provisions of the Health and Safety Code relating to holding itself out as a health care service plan, deceptive advertising, misleading telemarketing scripts, inexact and deceptive price advertising, and inappropriate offers of gifts or bait, among other things; and, in particular, sections 1360, 1360.1, 1361, 1365(a), 1365.5, 1366, 1367 (a), (b), (d), (e)(1), (f), (g) and (h)(1); 1368.02(b), 1373(a), 1379, 1381, 1384(a), (d) and (f); 1385 and 1395 of the Knox-Keene Act, as required by paragraph 1.B.

3. Respondent failed to submit for the Department's prior review and approval any and all advertising and marketing materials to be used in connection with the sale of discount health cards.

4. Respondent failed to cease and desist the sale of any insurance product in connection with the sale of discount health cards.

5. Respondent failed to demonstrate, within 30 calendar days from the date of the issuance of the Interim Order, to the satisfaction of the Department, that Respondent is providing a quantifiable and non-illusory benefit to the California consumer.

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THEREFORE, IT IS HEREBY ORDERED:

That the Order temporarily suspending the Cease and Desist Order issued on March 4, 2005, is hereby terminated, and the Cease & Desist Order issued on December 10, 2004, a copy of which is attached hereto as Exhibit 1, is reinstated, effective immediately.

Dated: April 14, 2005

LUCINDA. EHNES, Director
Department of Managed Health Care

By: _____

AMY L. DOBBERTEEN
Assistant Deputy Director
Office of Enforcement
Department of Managed Health Care

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FILED
MAR - 4 2005
DEPARTMENT OF MANAGED HEALTH CARE
By
Filing Clerk

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

IN THE MATTER OF: AFFORDABLE HEALTH CARE SOLUTIONS, dba CONTINENTAL HEALTH, dba HEALTH PLANS PLUS, Respondent.	DMHC No.: 04-373 OAH No.: **INTERIM ORDER SUSPENDING CEASE AND DESIST ORDER**

TO: AFFORDABLE HEALTH CARE SOLUTIONS:

The Director of the Department of Managed Health Care, by and through her designee, Assistant Deputy Director Amy L. Dobberteen, makes the following **ORDER** based on Respondent's representation of compliance with the Cease and Desist Order issued on December 10, 2004, and on Respondent's commitment to seek licensure by the Department.

The Department hereby suspends enforcement of its Cease & Desist Order issued against Respondent on December 10, 2004, subject to Respondent's compliance with the following requirements and conditions in this Order.

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IT IS HEREBY ORDERED:

I. Respondent shall:

A. File an application for licensure under the Knox-Keene Health Care Service Plan Act of 1975, Health & Safety Code sections 1340 *et seq.*, in accordance with the following time frame:

1. On or before April 1, 2005 schedule and complete the Department's electronic filing training course;
2. On or before May 2, 2005, complete the Department's electronic filing certification process;
3. On or before June 3, 2005, file an application for licensure, which demonstrates compliance with all requirements of the Knox-Keene Act or, as may be applicable, and meets the requisite burden of proof for exemption or waiver pursuant to Health and Safety Code Sections 1343(b) and 1343.5; and
4. Demonstrate efforts, satisfactory to the Department, to resolve all compliance concerns identified by the Department in the license application, and make reasonable progress to the satisfaction of the Department to complete the license application process by October 3, 2005.

B. Implement immediately the following:

1. Operational changes necessary and sufficient for full compliance with the requirements of Health and Safety Code Sections 1360, 1360.1, 1361, 1365(a), 1365.5, 1366, 1367 (a), (b), (c), (d), (e)(1), (f), (g) and (h)(1); 1368.02(b), 1373(a), 1379, 1381, 1384(a), (d) and (f); 1385 and 1395 of the Knox-Keene Act;
2. Revisions to Respondent's membership guide, necessary and sufficient for full compliance with the requirements of Health and Safety Code Sections 1363 and 1363.1 and California Code

of Regulations, title 28, sections 1300.63, 1300.63.1, 1300.63.2 and 1300.67.4, as applicable;

3. Establish a grievance system in compliance with Health and Safety Code Sections 1368 and 1368.01, and California Code of Regulations, title 28, section 1300.68;

4. Distribute a supplement to the Member Guide disclosing the grievance process; and

5. Submit to the Department monthly a report of all grievances and complaints by California members, including the reason for each complaint and the disposition of each.

C. Submit for the Department's prior review and approval any and all advertising and marketing materials to be used in connection with the sale of discount health cards.

D. Cease and desist the sale of any insurance product in connection with the sale of discount health cards.

E. Demonstrate, within 30 calendar days from the date of the issuance of this Interim Order, to the satisfaction of the Department, that Respondent is providing a quantifiable and non-illusory benefit to the California consumer.

II. The Department may extend the time during which Respondent may do any act enumerated herein if it is satisfied that Respondent is making reasonable progress, but this provision shall not create any expectation that time will be extended, nor shall the fact that the Department extends time once create any expectation that it will do so again.

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III. The failure of any condition required during the licensure process, or as listed above, may result in the automatic reinstatement of the Cease & Desist Order, which may be amended, as the Department deems necessary.

Dated: March 4, 2005

LUCINDA EHNES, Director
Department of Managed Health Care

By: _____
AMY L. DOBBERTEEN
Assistant Deputy Director
Office of Enforcement

AMY L. DOBBERTEEN
Assistant Deputy Director, Bar No. 155111
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Attorneys for Complainant

FILED
DEC 10 2004
DEPARTMENT OF MANAGED HEALTH CARE
By _____
Filing Clerk

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

IN THE MATTER OF: AFFORDABLE HEALTH CARE SOLUTIONS, INC., DBA CONTINENTAL HEALTH CARE, Respondent.	DMHC No.: 04-373 OAH No.: **CEASE AND DESIST ORDER**

TO: AFFORDABLE HEALTH CARE SOLUTIONS, INC.

The Director of the Department of Managed Health Care, by and through her designee, Assistant Deputy Director Amy L. Dobberteen, after investigation, determines as follows:

I.

INTRODUCTORY STATEMENT

1. California Health and Safety Code section 1349 requires all entities arranging for health care services to first obtain a license from the California Department of Managed Health Care. Respondent is acting as a health care service plan, arranging for the provision of health care services, and accepting periodic payments. Accordingly, it is operating as a health care service plan as defined in Health and Safety Code section 1345(f)(1), and is required to obtain a license under the Knox-Keene Health Care Service Plan Act of 1975.

Respondent's failure to obtain a license subjects it to the enforcement powers of the Department of Managed Health Care.

2. Therefore, the Department of Managed Health Care, by the Order below, hereby directs Respondent to cease and desist from any further unauthorized, deceptive and unlawful activity in the State of California.

II.

STATUTORY AUTHORITY

3. The Director of the Department of Managed Health Care is vested with the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975 ("Knox-Keene Act") (Health and Safety Code section 1340, *et seq*). The intent and purpose of the Knox-Keene Act is to promote the delivery and quality of health and medical care to the people of California who enroll in a health care service plan by, among other things: "Prosecuting malefactors who make fraudulent solicitation or who use deceptive methods, misrepresentations, or practices, which are inimical to the general purpose of enabling a rational choice for the consumer public." (Health and Safety Code sections 1341 and 1342(c).)

4. Health and Safety Code section 1345(f)(1) defines a health care service plan to mean:

> Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

5. The Legislature has plainly evidenced its intent as to the application of the Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

> It is the intent of the Legislature that the provisions of this chapter shall be applicable to any private or public entity or political subdivision which, in return for a prepaid or periodic charge paid by or on behalf of a subscriber or enrollee, provides, administers or otherwise arranges for the provision of health care services, as defined in this chapter, unless such entity is exempted from the provisions of this chapter by, or pursuant to, Section 1343.

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6. Respondent is not exempted from the application of Health and Safety Code section 1343.

7. Any person conducting business as a health care service plan is required to have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349, which provides:

> It is unlawful for any person to engage in business as a plan in this state or to receive advance or periodic consideration in connection with a plan from or on behalf of persons in this state unless such person has first secured from the director a license, then in effect, as a plan or unless such person is exempted by the provisions of Section 1343 or a rule adopted thereunder.

8. Untrue and misleading advertising and solicitation is prohibited by Health and Safety Code section 1360, which provides:

> (a) No plan, solicitor, solicitor firm, or representative shall use or permit the use of any advertising or solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purposes of this article:
>
> 1. A written or printed statement or item of information shall be deemed untrue if it does not conform to fact in any respect, which is, or may be significant to an enrollee or subscriber, or potential enrollee or subscriber in a plan.
> 2. A written or printed statement or item of information shall be deemed misleading whether or not it may be literally true, if, in the total context in which the statement is made or such item of information is communicated, such statement or item of information may be understood by a person not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage, or the absence of any exclusion, limitation, or disadvantage of possible significance to any enrollee, or potential enrollee or subscriber, in a plan, and such is not the case.
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> * * *
>
> (b) No plan, or solicitor, or representative shall use or permit the use of any verbal statement which is untrue, misleading, or deceptive or make any representations about coverage offered by the plan or its cost that does not conform to fact. All verbal statements are to be held to the same standards as those for printed matter provided in subdivision (a).

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9. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

10. Health and Safety Code section 1395 further requires that:

> ...Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. ... Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable.

11. The Director is empowered to enforce compliance with the Knox-Keene Act by Health and Safety Code section 1391, subdivision (a)(1), which provides in relevant part:

> The director may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the director pursuant to this chapter.

III.

VIOLATIONS OF LAW

12. Respondent is undertaking to arrange for the provision of health care services to members, either directly or through arrangements with others, in return for a periodic charge paid by the members, within the meaning of Health and Safety Code section 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for the provision of health care services within the meaning of Health and Safety Code section 1399.5. Respondent, therefore, is engaging in business as a health care service plan in this state and receiving advance and periodic consideration from or on behalf of persons in this state, without having first secured a license from the Director. This conduct violates Health and Safety Code section 1349.

13. Respondent's advertising and solicitation practices offer discounts from doctors, dentists, hospitals, and pharmacies that are unavailable because it has no contracts with providers to offer discounted prices. Additionally, Respondent's claims of risk-free

cancellation policies involve representations which are untrue in violation of Health and Safety Code sections 1360(a)(1) and (b).

14. Respondent's advertising and solicitation practices are misleading in violation of section 1360(a)(2) and (b) by using language typically associated with traditional health insurance coverage.

15. Respondent, by operating as a health care service plan without a license, is engaging in conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by section 17200 of the Business and Professions Code, in violation of Health and Safety Code section 1386(b)(7).

16. Respondent is engaging in prohibited price advertising using terms such as "up to," in fraudulent, deceitful, or misleading advertising of non-existent discounts and of indefinitely extended limited-time offers in violation of Health and Safety Code section 1395.

IV.

CEASE AND DESIST ORDER

Based on the foregoing, the Director finds Respondent in violation of Health and Safety Code sections 1349; 1360, subdivisions (a)(1), (a)(2), and (b); 1386(b)(7) and 1395.

THEREFORE, pursuant to Health and Safety Code section 1391 of the Knox-Keene Act:

IT IS HEREBY ORDERED:

1. That Respondent, and any of its directors, officers, trustees, managers, affiliates, agents, parent organizations, and all persons participating with them or acting in concert with them, shall immediately **CEASE AND DESIST FROM:**

   a. Operating in California without a Knox-Keene Act license;

   b. Any further deceptive or misleading advertisements or solicitations to California residents;

   c. Any enrollment activities in California for health-care memberships, including, but not limited to, medical, dental, hospitalization, and

pharmacy;

d. Taking, receiving, or forwarding any application for health-care memberships from California residents; and

e. Collecting or receiving, in full or in part, any payments for health-care memberships from or on behalf of California residents;

2. Respondent shall disclose in any advertisement or solicitation that may reasonably be viewed by residents of the State of California, including but not limited to any Internet web page or advertisement, that its health care membership product is not available in the State of California.

Dated: December 10, 2004

LUCINDA EHNES, Director
Department of Managed Health Care

By: _____
AMY L. DOBBERTEEN
Assistant Deputy Director
Office of Enforcement