

Michael Winsor
Special Assistant Attorney General
Montana State Auditor's Office
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the Department of Insurance

**BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA**

IN THE MATTER OF:)	Cause No. INS-2007-75
)	
DNH CONSULTING GROUP, LLC, and)	CONSENT AGREEMENT
ERIC DEVASH, individually and as the)	AND FINAL ORDER
sole member of the foregoing entity,)	
)	
Respondents.)	

The State Auditor and the Montana Department of Insurance (Department), pursuant to the authority of the Montana Insurance Code, §§ 33-1-101 *et seq.* and Mont. Code Ann. § 2-4-603, DNH Consulting Group LLC, and Eric Devash (Respondents) without admitting or denying the following Allegations of Fact and Conclusions of Law, hereby mutually agree as follows:

ALLEGATIONS OF FACT

1. DNH Consulting Group LLC (DNH), d.b.a. Health Services, is a Florida limited liability company formed in December of 2005.
2. Erik Devash is the sole managing member of DNH.
3. DNH purports to be a purveyor of pharmacy discount cards.
4. DNH markets its product through telephone solicitors. DNH's telephone solicitors

require purchasers to give their bank account information so that DNH may take automatic withdrawals from consumer accounts. The total price of the DNH card is or was \$499.00.

5. DNH claims its discount card provides consumers with an average of 20-90% off the regular retail price for prescriptions and a discount of 5-90% on generic prescriptions and a 5-75% discount on name brand prescriptions.

6. DNH purported to offer other discounts on prescribed medical equipment, lab work, contact lenses and imaging such as MRI scans and x-rays.

7. DNH did not, at all times material hereto, have contracts with any medical care or prescription drug providers in the state of Montana which obligated the providers to honor the DNH discount card.

8. DNH did not provide the Department of Insurance with the name and contact information of its officer in charge of regulatory compliance prior to soliciting its product in the state of Montana.

9. DNH did not disclose to discount card purchasers, in enrollment materials, that purchasers had thirty days within which to cancel the purchasers' memberships.

10. DNH did not state on its medical care discount card that the product was not insurance in bold and prominent type of at least 14 points in size.

11. DNH did not provide prospective purchasers access to a list of any medical care or prescription drug providers in the prospective purchasers' service areas prior to purchase.

12. DNH did not provide prospective purchasers reasonable access to a list of benefits and services provided through the use of the discount card prior to purchase.

13. DNH marketed, promoted, sold, or distributed its product in the state of Montana for a period of at least 91 days to at least 28 Montana consumers without holding a certificate of registration issued by the Commissioner of Insurance.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance. Mont. Code Ann. § 2-15-1903.
2. The Montana Insurance Department is under the control and supervision of the Commissioner. Mont. Code Ann. §§ 2-15-1902 and 33-1-301.
3. The Commissioner and Insurance Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.
4. The Commissioner shall administer the Insurance Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).
5. "Pharmacy discount card" means a paper or plastic device or other mechanism arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount. Mont. Code Ann. § 33-38-102(8).
6. "Medical care discount card" means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider. The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount.

Mont. Code Ann. § 33-38-102 5(a)-(b).

7. Although the discount card sold by DNH to Montana consumers may appear to be a pharmacy discount card, it is as a matter of law a medical care discount card because the pharmacy discount benefit is combined with medical care discount benefits on medical care-related purchases from health care providers such as prescribed medical equipment, lab work, contact lenses, and imaging such as MRI scans and x-rays.

8. A "medical care discount card supplier" is a person engaged in selling or furnishing, as either principal or agent, for consideration, one or more medical care discount cards to another person or persons. Mont. Code Ann. § 33-38-102.

9. "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity. Mont. Code Ann. § 33-1-202(3).

10. Respondents are medical care discount card suppliers.

11. According to Mont. Code Ann. § 33-38-105(1), a medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the Commissioner.

12. Respondents do not hold a certificate of registration.

13. DNH has committed at least ninety-one violations of Mont. Code Ann. § 33-38-105 by marketing, promoting, selling, or distributing its product in the state of Montana for a period of at least 91 days to at least 28 Montana consumers.

14. Respondents violated Mont. Code Ann. § 33-38-104(1) by failing to give consumers a

thirty-day right to cancel memberships and by failing to ensure that each purchaser or user received with the card a notice stating the terms under which the medical care discount card may have been returned or canceled.

15. Respondents violated Mont. Code Ann. § 33-38-103(2)(a) by failing to state on their medical care discount cards that the product was not insurance in bold and prominent type of at least 14 points in size.

16. Respondents violated Mont. Code Ann. § 33-38-103(1)(c) by failing to provide prospective purchasers or users, before purchase of the medical care discount card, access to a list of health care providers, including the name, city, state and provider type.

17. Respondents violated Mont. Code Ann. § 33-38-103(2)(b) by failing to designate and provide the Department with the name, address and telephone number of a medical care discount card compliance officer responsible for ensuring regulatory compliance.

18. Respondents violated Mont. Code Ann. § 33-38-103(1)(d) by failing to enter into contracts with prescription drug and medical care providers in Montana to provide the discounts represented by the Respondents to be granted to purchasers of the card.

19. Respondents violated Mont. Code Ann. § 33-38-103(1)(a) by making misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by the medical card discount card and the access to any range of discounts offered by a medical care discount card because there were no providers in Montana under contract to provide the purported discounts.

20. A person commits the act of insurance, medical care discount card, or pharmacy

discount card fraud, when in the course of offering or selling insurance, a medical discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment. Mont. Code Ann. § 33-1-1302

21. Respondents violated Mont. Code Ann. § 33-1-1302 by representing that the medical care discount card provided benefits which were not provided when DNH did not have contracts with any medical care or prescription drug providers obligated to honor the DNH discount card and by representing that the medical care discount card was a valid and lawful product in Montana. Respondents made these representations knowing that they were untrue or with reckless indifference as to the truth of the representations with the intention of causing consumers to rely on the misrepresentation to the consumers' detriment.

AGREEMENT

The Department together with DNH Consulting Group LLC and Eric Devash, Respondents, hereby stipulate and agree to the following:

1. Respondents acknowledge the Commissioner and Department have jurisdiction over the subject matter of the above-entitled proceeding.
2. Respondents acknowledge they were advised of the right to be represented by legal counsel, have exercised their right to counsel, and are satisfied with the services of their attorney.
3. Respondents acknowledge they have read and understand each term of this Consent Agreement and they enter into this Consent Agreement voluntarily and without reservation.
4. Respondents neither admit nor deny the foregoing Allegations of Fact and

Conclusions of Law and admit no liability, directly or indirectly, for any damages that may have resulted from the actions of their employees. Notwithstanding, Respondents and the Department stipulate and agree that this Consent Agreement resolves the alleged violations set forth in the Notice of Proposed Agency Action.

5. Respondents and the Department hereby acknowledge and agree that this Consent Agreement constitutes the entire agreement between the parties and that no other promises or agreements, either express or implied, have been made by the Department or by any member, officer, agent, or representative of the Department to induce Respondents to enter into this Consent Agreement.

6. Any notice provided for in this Consent Agreement and any other communication between the Department and Respondents are legally sufficient if given in the following manner:

(a) notice to the Department may be given by mailing the notice by United States mail, postage paid and addressed to the Department as follows:

Michael Winsor
Montana State Auditor's Office
840 Helena Avenue
Helena, MT 59601

(b) notice to Respondents may be given by mailing the notice by United States mail, postage paid and addressed as follows:

Tiffany J. Eaton, Esq.
Cove & Associates, P.A.
225 South 21st Avenue
Hollywood, FL 33020

(c) Either party shall give to the other party notice of change of address, or the substitution of counsel, for the giving of notices in the manner provided in this Consent Agreement, if applicable.

7. With respect to the Notice of Agency Action, Respondents specifically and affirmatively waive a contested case hearing and elect to resolve this matter on the terms and conditions set forth herein.

8. Respondents fully and forever release and discharge the Commissioner, Department, and all Department employees and agents from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of this administrative action and the Factual Allegations and Conclusions of Law incorporated by reference in this Consent Agreement.

9. The parties acknowledge and agree that this Consent Agreement may not be modified orally, and any subsequent modifications to this Consent Agreement must be mutually agreed upon in writing to be effective.

10. The Department and Respondents agree that this Consent Agreement shall be incorporated into and made a part of the attached Final Order issued by the Commissioner herein.

11. Respondents further understand that, upon the signing of the Final Order by the Commissioner or her representative, this Consent Agreement and Final Order will be an order of the Commissioner and failure to comply with it may constitute a separate violation of the Montana Insurance Code, and as provided in Mont. Code Ann. § 33-1-318, may result in subsequent legal action by the Department.

12. Alleged violations of this Consent Agreement shall be noticed in accordance with

Paragraph 6 of this Consent Agreement. Alleged violators will be provided an opportunity for a contested case hearing and rights to appeal under the Montana Administrative Procedures Act.

13. Upon execution of this Consent Agreement, full payment of restitution, and full payment of an administrative fine as set forth in Paragraph 16 below, the Department will not commence any further administrative, civil, or other legal action based upon the allegations set forth in this action that occurred prior to the execution of this Consent Agreement.

14. This Consent Agreement shall be effective upon signing of the Final Order.

15. Respondents acknowledge that this Consent Agreement and Final Order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.

16. The Department and the Respondent further agree as follows:

(a) Respondents have cooperated with the Department, ceased the sales of medical care discount cards in Montana, and agree to permanently cease and desist marketing, promoting, selling, or distributing medical care discount cards in Montana.

(i) Respondents represent that they have, previous to this agreement, fully refunded the consumers identified in Exhibit "A." The total amount of restitution previously paid by Respondents is One Thousand Forty Two Dollars and Eighty Cents (\$1,042.80). Respondents shall within sixty (60) days of the execution of this agreement provide the Department with proof that the consumers identified in Exhibit "A" were refunded.

(b) Within sixty (60) days of the execution of this Consent Agreement and Final Order, Respondents shall pay full restitution to all Montana consumers identified in Exhibit "B," who have not yet received refunds, in the agreed amount of Six Thousand Seven Hundred Fourteen Dollars and Fifty Five Cents (\$6,714.55) together with interest in the amount of 10% per year

beginning from the date of each consumer purchase, at a daily interest of rate of .000277778, until May 15, 2009. The total amount of interest is One Thousand Four Hundred Sixteen Dollars and Fifty Cents (\$1,416.50). The total amount of restitution and interest to be paid by Respondents to the consumer's listed in Exhibit "B" is Eight Thousand One Hundred Thirty One Dollars and Five Cents (\$8,131.05). The total amount of restitution and interest paid or to be paid to the consumers listed in Exhibit A and B is Nine Thousand One Hundred Seventy Three Dollars and Eighty Five Cents (\$9,173.85).

(c) Restitution payments shall be made directly to the consumers identified in Exhibit "B" attached hereto and in the amounts set forth therein. Respondents shall send such payments in any manner that can be traced, including but not limited to, certified mail or with delivery confirmation.

(i) Payment shall be accompanied by a letter to each consumer listed Exhibit "B" notifying that consumer of the restitution she/he will receive. The letter must be approved by the Department prior to mailing. A copy of each letter shall be sent to the Montana State Auditor's Office no later than thirty (30) days after mailing.

(ii) Copies of cancelled checks showing payment to each consumer identified in Exhibit "B" shall be sent to the Montana State Auditor's Office within one hundred twenty (120) days of the execution of this Consent Agreement and Final Order. If a given restitution check is not cancelled within this one hundred twenty (120) day period, the Respondents must so notify the Department and produce a copy of the restitution check and proof that the check was mailed.

(d) If any payment to a consumer listed in Exhibit "B" is returned as undeliverable, Respondents shall take or cause reasonable steps to be taken to locate that consumer. If

thereafter, the consumer still is not located, a list of all consumers that have not been located must be provided to the Department, and all funds due or payable to that consumer whose last known address is in the State of Montana, but not deliverable, shall be delivered to the Montana Department of Revenue pursuant to the provision of the "Uniform Unclaimed Property Act," Mont. Code Ann. § 70-9-801, *et seq.*, to be processed as set forth in that Act. The Respondents shall provide all available information as requested by the Montana Department of Revenue Administrator to handle the funds as unclaimed property. The Respondents shall deliver a report to the Montana State Auditor's Office no later than one hundred eighty (180) days after the execution of this Consent Agreement and Final Order, which details the amount that was delivered to the Montana Department of Revenue Administrator for treatment as unclaimed property under the "Uniform Unclaimed Property Act."

(i) In the event Respondents fail to make payments as described above, or fail to timely provide proof of any such payments to the Montana State Auditor's Office, the suspended portion of the administrative fine as set forth in Paragraph 16(e) below shall become immediately due and owing to the Montana State Auditor's Office.

(e) The Department and Respondents hereby stipulate and agree to the imposition of an administrative fine upon the Respondents in the amount of Fifty Thousand Dollars (\$50,000.00), Twenty Five Thousand (\$25,000.00) of which shall be permanently, fully, and completely suspended, subject to full and continuing performance of this agreement by the Respondents.

(i) Respondents shall make five installment payments in the amount of Five Thousand Dollars (\$5,000) in satisfaction of the total non-suspended administrative fine amount of Twenty Five Thousand Dollars (\$25,000).

(ii) The first installment shall be due within one hundred and twenty (120) days from the date of the execution of this Consent Agreement and Final Order; the second installment shall be due within one hundred and eighty days (180) from the execution of this Consent Agreement and Final Order; the third installment shall be due within two hundred forty (240) days from the execution of this Consent Agreement and Final Order; the fourth installment shall be due within three hundred (300) days from the execution of this Consent Agreement and Final Order; and the fifth and final installment shall be due within three hundred sixty (360) days from the execution of this Consent Agreement and Final Order.

(iii) Checks should be payable to the State of Montana and sent to the Montana State Auditor's Office, Attention: Michael Winsor, 840 Helena Avenue, Helena, Montana, 59601.

(iv) In the event that Respondents fail to make timely installment payments as set forth above in Paragraph 16(e)(ii), substantially fail to fully perform their obligations under this Consent Agreement and Final Order, and/or violate the provisions of Mont. Code Ann. § 33-1-101, *et seq.*, the Respondents stipulate and agree to pay the suspended portion of the administrative fine in the amount of Twenty Five Thousand Dollars (\$25,000).

//

//

//

//

//

//

//

DNH CONSULTING GROUP LLC

By: [Signature]
ERIC DEVASH
Managing Member

5-18-2009
Date

Provided A VALID FRA D/L FOR ID
SUBSCRIBED and SWORN to before me this 18TH day of MAY, 2009.

(SEAL)



[Signature]
(Signature)
Walter Umphrey
(Printed name)

Notary Public for the State of FLORIDA
Residing at 4270 Aloma Ave Ste 172 Winter Park Fl 329
My commission expires: 1/20/2011

ACCEPTED ON BEHALF OF THE INSURANCE DEPARTMENT:

5/26/09
Date
[Signature]

Michael Winsor
Special Assistant Attorney General

FINAL ORDER

Pursuant to the authority vested by the Montana Insurance Code, Mont. Code Ann. § 2-4-603, MCA and § 33-1-101, MCA, *et seq.*, and upon review of the foregoing Consent Agreement and Final Order and good cause appearing therefor,

IT IS ORDERED that the foregoing Consent Agreement between the Insurance Department and the Respondents, DNH Consulting Group LLC and Eric Devash, is hereby adopted as if set forth fully herein.

DATED this 26th day of MAY, 2009.

MONICA J. LINDEEN
State Auditor and Commissioner of Insurance

By: Robert W Moon
ROBERT W. MOON
Deputy Commissioner of Insurance

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 26 day of MAY, 2009, a true and correct copy of the foregoing Consent Agreement and Final Order was served upon the following by certified mail, with postage prepaid and return receipt requested:

Tiffany J. Eaton, Esq.
Cove & Associates, P.A.
225 South 21st Ave.
Hollywood, FL 33020
(Attorney for the Respondents)



Darla Sautter, Legal Administrative Secretary
Montana State Auditor's Office