

**Hearing Examiner**

JUL 1 2 2004

STATE AUDITOR'S OFFICE  
INSURANCE DEPARTMENT  
HELENA, MONTANA

IN THE MATTER OF:	)	Case No.: 2004-33
	)	
ALL AMERICAN HEALTH CARE	)	TEMPORARY CEASE AND DESIST
ASSOCIATION and/or its agents and	)	ORDER, NOTICE OF PROPOSED
representatives,	)	AGENCY ACTION AND OPPORTUNITY
	)	FOR HEARING
Respondents.	)	
_____	)	

The Montana Insurance Department (hereinafter referred to as "the Department"), pursuant to the authority of the Montana Insurance Code, as found at Section 33-1-101, et seq., Montana Code Annotated [hereinafter cited as MCA], and Section 33-1-318, MCA, hereby issues the following allegations of fact, proposed conclusions of law, order and notice of right to a public hearing, and Temporary Cease and Desist Order:

**ALLEGATIONS OF FACT**

1. At all times relevant hereto, the above-named Respondents conducted business at 509 West 19th Street, Houston, TX 77008.
2. The above-named Respondents recently advertised a health insurance plan in the State of Montana via unsolicited facsimiles offering medical, dental and prescription medicine co-pay coverage. The insurance plan offered by Respondents are contracts whereby Respondents undertake to indemnify others or pay or provide specified or determinable amounts or benefits upon determinable contingencies. Specifically, Respondents state their health insurance plan pays 60 percent of an insured's doctor bills, 80 percent of an insured's hospital bills, a \$10.00 to \$20.00 co-pay on an insured's medical prescriptions and all of an insured's emergency room visits minus a \$100.00 deductible.

3. In performing the above-described acts, Respondents acted as an insurer and transacted insurance in Montana without a required Certificate of Authority issued by the Commissioner. By information and belief, Respondents continue to act as an insurer and transact insurance in Montana without a required Certificate of Authority issued by the Commissioner.

4. During a recent interview, one of Respondents' agents named "Don" stated, "This is not really insurance, but an alternative to insurance through ppoNEXT." However, none of the Respondents' offers contain a disclaimer stating their plans are not insurance, and the offers are, in fact, designed to masquerade as offers for medical insurance coverage.

5. ppoNext is a preferred provider service that acts as a discount broker to secure medical providers who are willing to provide medical services at discounted rates. ppoNext has no Montana family practitioner medical provider or Montana hospital facility that is a member of its preferred provider list.

6. An investigation conducted by the Department revealed that no Montana medical provider recognizes or honors any part of the insurance plan offered by Respondents.

7. Therefore, Respondents, when in the course of offering medical insurance as hereinabove described, misrepresented numerous material facts known to Respondents to be untrue or made with reckless indifference as to whether they are true, to wit: the fact that no Montana medical provider recognizes or honors any part of its insurance plan, and that no Montana family medical practitioner or Montana hospital facility is a member of ppoNext's preferred provider list. In doing so, Respondents intended to cause others to rely upon said representations to the relying persons' detriment, and thereby committed insurance fraud under Montana law.

## CONCLUSIONS

1. The Department has jurisdiction over this matter by reason of Respondents' offer of its health insurance plan to persons in Montana pursuant to Section 33-1-311, MCA.
2. Respondents violated Sections 33-1-102 and 33-2-101, MCA by offering offer its health insurance plan to persons in Montana without the required certificate of authority as hereinabove described.
3. Respondents violated Section 33-1-107, MCA by offering its discount medical purchasing mechanism through ppoNext as hereinabove described and failing to state the offered discounts are not insurance in bold and prominent type, prominently placed in the advertisements.
4. Respondents committed insurance fraud in violation of Section 33-1-1302, MCA by offering its medical insurance plan as hereinabove described and misrepresenting numerous material facts known to Respondents to be untrue or made with reckless indifference as to whether they are true with the intention of causing others to rely upon said representations to the relying persons' detriment.

## CEASE AND DESIST ORDER

Pursuant to Section 33-1-318, MCA, it appears to the Department that the above named Respondents have engaged, are engaged or are about to engage in acts or practices constituting violations of the Montana Insurance Code and therefore hereby orders Respondents to cease and desist from engaging in any act, practice, or course of business that violates any section of the Montana Insurance Code, including, but not limited to, Sections 33-1-102, 33-1-107, 33-2-101, and 33-1-1302, MCA.

Section 33-18-1005(1), MCA, provides that any willful violation of this cease and desist order may be punished by a penalty of \$25,000.00 upon each person in such violation, in addition to all other penalties imposed by the laws of the State of Montana.

### **NOTICE OF PROPOSED AGENCY ACTION**

Staff of the Insurance Department of the office of the State Auditor and Department of Insurance of the State of Montana (Department), pursuant to the authority of the Securities Code of Montana, Section 30-10-101, et seq., MCA is proposing to the Department that he take disciplinary action against the above-named Respondents for violations of the Montana Insurance Code as hereinabove described. The Department has authority to take such action under the provisions of Sections 33-1-102, 33-1-311, 33-1-301, 33-1-317, 33-1-318, 33-18-1004 and 33-18-1005 , MCA.

In particular, the staff of the Insurance seeks disciplinary action against Respondents including imposition of a fine not to exceed \$25,000.00 per violation pursuant to Section 33-18-1005(1), in addition to all other penalties imposed by the laws of the State of Montana.

Service of process is pursuant to Section 33-1-314, MCA.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing and to respond to this notice and present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner. This is provided for by the Montana Administrative Procedure Act, Sections 2-4-601, MCA and following, including Section 2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing. Pursuant to Mont. Code Ann. Section 33-1-701(2) (1999), the hearing shall be held within 30 days after receipt of the demand by the commissioner, unless postponed by mutual consent.

You have a right to be represented by an attorney at any and all stages of this proceeding. If you want to resist the proposed action under the jurisdiction of the Commissioner, you must so advise him within fifteen (15) days of the date you receive this notice. You may so advise him by writing to John Kurtz, Insurance Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. While so advising Mr. Kurtz, you should make clear whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Section 2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### **POSSIBILITY OF DEFAULT**

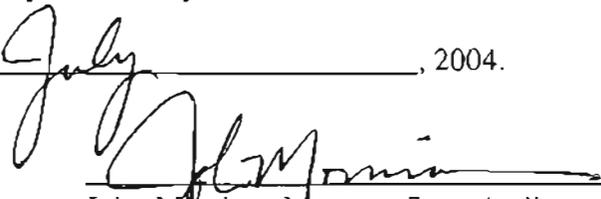
Failure to give notice or to advise of your demand for a hearing or form of informal procedure within fifteen (15) days of receipt of this NOTICE OF PROPOSED AGENCY ACTION AND OPPORTUNITY FOR HEARING will result in the entry of a default order imposing the disciplinary sanctions against you and/or your license, all without any more notice to you, pursuant to 6.2.101, Administrative Rules of Montana and the Attorney General's Model Rule 10, 1.3.214.

#### **CONTACT WITH INSURANCE COMMISSIONER'S OFFICE**

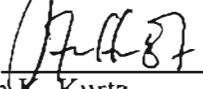
If you have questions or wish to discuss this matter, please contact John Kurtz, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59604-4009, (406) 444-1936

or, within Montana, (800) 332-6148. If you are represented by an attorney, please make any contacts with this office through your attorney

DATED this 12 day of July, 2004.



John Morrison Montana State Auditor

By: 

John K. Kurtz  
Insurance Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a true and correct copy of the foregoing TEMPORARY CEASE AND DESIST ORDER AND NOTICE OF PROPOSED AGENCY ACTION to the following persons by depositing the same in the U.S. Mail, certified, return receipt requested, on this 12 day of July, 2004.

TO:

All American Health Care Association  
509 West 19th Street  
Houston, TX 77008

BY: Wesley Sautter