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6 Attorney for Respondents
7 National Better Living Association, Inc.; Allied Health Benefits, Inc.; George E.
8 Spalding, Jr.; Angus Morrison; Timothy Siewert; Michael Siewert; John Fabbrini;
9 John B. "Barry" Shaw, Jr.; and G. Dan Siewert, III

9 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**
10 **OFFICE OF THE STATE AUDITOR**
11 **STATE OF MONTANA**

12 IN THE MATTER OF THE NATIONAL)
13 BETTER LIVING ASSOCIATION, INC.;)
14 SELECT BENEFITS SERVICES)
15 ASSOCIATION; THE LIFE INSURANCE)
16 COMPANY OF NORTH AMERICA;)
17 COMPANION LIFE INSURANCE)
18 COMPANY; GUARANTEE TRUST LIFE)
19 INSURANCE COMPANY; UNITED)
20 STATES LIFE INSURANCE COMPANY)
21 IN THE CITY OF NEW YORK;)
22 NATIONAL UNION FIRE INSURANCE)
23 COMPANY; ALBERT CORMIER)
24 SOLUTIONS, LLC, f.k.a. ACS)
25 HEALTHCARE, LLC; ALLIED HEALTH)
26 BENEFITS, INC.; INTERNATIONAL)
27 MARKETING AND ADMINISTRATION)
28 CORPORATION; PSI/HEALTH LEADS)
DOES 1-10, and XYZ BUSINESS)
ENTITIES 1-10,)

Case No.: INS-2009-70

**ANSWER AND REQUEST FOR
HEARING - ALLIED HEALTH
BENEFITS, INC.**

Respondents.

1 Allied Health Benefits, Inc. [AHB], by and through its counsel of record, Jacqueline T.
2 Lenmark of Keller, Reynolds, Drake, Johnson and Gillespie, P.C., provides this response to the
3 Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing [Notice]
4 recommended to the State of Montana Commissioner of the Securities and Insurance Office of
5 the State Auditor [CSI] by staff of the Department of Insurance [Department] as follows:

6 **SPECIAL APPEARANCE**

7 AHB files this Answer and Request for Hearing subject to his Motion to Dismiss for
8 Lack of Personal Jurisdiction pursuant to Mont. R. Civ. P. 12(b)(2) and 4B(1). The grounds for
9 the motion are that AHB is not generally found within the state of Montana and has committed
10 no acts that would subject it to the Montana long-arm statute as provided in Mont. R. Civ. P.
11 4B(1)(a) – (f). AHB’s filing of this Answer and any actions taken subsequent to filing of this
12 Answer, including but not limited to oral argument, are done with a continuing objection to any
13 assertion of personal jurisdiction over AHB. AHB does not thereby voluntarily submit to this
14 tribunal’s jurisdiction, concede jurisdiction, or waive any objections it may have to jurisdiction.

15 **FIRST DEFENSE**

16 1. The Notice, and each of its allegations and conclusions of law, fails to state a violation
17 of law by AHB for which the proposed penalties can lawfully be imposed.

18 **SECOND DEFENSE**

19 2. The Notice does not specify any time periods alleged to be relevant or “material” to
20 the agency action and therefore AHB’s knowledge to admit or deny the truth of the allegations is
21 limited. To the extent that an admission or denial is dependent upon such knowledge, except as
22 expressly admitted below, AHB denies each allegation of fact and conclusion of law of the
23 Notice.

24 **Allegations of Fact**

25 **The Respondents**

26 3. The allegations of ¶¶ 1-2 appear to be directed to Respondents other than AHB for
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1 which an response from AHB is not required, or if deemed to be required, AHB denies.

2 4. Responding to the allegations of ¶ 3, admits AHB is a Georgia for profit corporation
3 and that one article in AHB's Certificate of Articles is related to medical discount plans, but
4 denies that its sole purpose was to become a medical care discount card provider. Admits that
5 AHB's officers are G. Dan Siewert, III, Angus Morrison, George E. Spalding, Jr., and Tim
6 Siewert. Admits that Angus Morrison, George E. Spalding, Jr., and Tim Siewert were past
7 NBLA officers until 2009, but denies that Angus Morrison, George E. Spalding, Jr., and Tim
8 Siewert are current NBLA officers. Admits that AHB's address was 6470 E. Johns Crossing.
9 NBLA moved into its own office at 5425 Peachtree Parkway, Norcross, GA 30092 on May 8,
10 2009. Admits that AHB assists in NBLA operations, member program development and other
11 administrative services. The contract between AHB and NBLA was executed on or around
12 January 1, 2007. Admits that CorpSavers Insurance Agency is located at the same address at
13 AHB. Admits that Tim Siewert is affiliated with CorpSavers. Denies that AHB collects
14 premiums from Montana insurance consumers.

15 5. Denies the allegations of ¶ 4 and affirmatively alleges Tim Siewert:

16 (a) became licensed April 18, 2007, not April 8, 2007. The licensed number on the
17 website shows 683712, not 707886 (which is NBLA's license);

18 (b) is appointed for life and disability for Guarantee Trust Life Insurance Company
19 [GTL], Life Insurance Company of North America [LINA], and Medico Insurance Company; and

20 (c) is appointed for life only for American General Assurance [AGA], American General
21 Life [AGL] and the United States Life Insurance Company in the City of New York [U.S. Life].

22 6. The allegations of ¶¶ 5-6 appear to be directed to Respondents other than AHB for
23 which an response from AHB is not required, or if deemed to be required, AHB denies.

24 7. Responding to the allegations of ¶ 7, denies that AHB and NBLA solicited and sold
25 products. Denies that AHB utilized unappointed producers. The remaining allegations of ¶ 7
26 appear to be directed to Respondents other than AHB for which no response from AHB is
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1 required or if deemed to be required AHB denies.

2 8. The allegations of ¶ 8 appear to be directed to Respondents other than AHB for which
3 an response from AHB is not required, or if deemed to be required, AHB denies.

4 9. Responding to the allegations of ¶ 9, denies there was a three-party contract between
5 NBLA, AHB and USLIC. The remaining allegations appear to be directed to Respondents other
6 than AHB for which no response is required, or if deemed to be required, AHB denies.

7 10. The allegations of ¶¶ 10-13 appear to be directed to Respondents other than AHB for
8 which an response from AHB is not required, or if deemed to be required, AHB denies.

9 **Multiple Respondents Acted in Concert to Violate the Montana Insurance Code**

10 11. Denies the allegations of ¶ 14 as overbroad and lacking notice to Respondents of the
11 acts or omissions alleged. Affirmatively alleges that on June 30, 2011, NBLA had 53 active
12 Montana members and the best numbers available to AHB indicate a total of 76 members since
13 January 1, 2006. To the extent the allegations of ¶ 14 relate to other Respondents, a response
14 from AHB is not required, or if deemed to be required, AHB denies.

15 12. Denies the allegations of ¶ 15 that AHB was in a “legal relationship” to other
16 Respondents as vague and overbroad, lacking sufficient specificity or definition of terms to
17 notice Respondents of the acts, omissions, or “legal relationship[s]” alleged. The allegation of
18 ¶ 15 that legal liability may be imputed to AHB from another party or from one party to another
19 calls for a legal conclusion to which no response is required or if deemed to be required, AHB
20 denies. To the extent the allegations of ¶ 15 relate to other Respondents, a response from AHB is
21 not required, or if deemed to be required, AHB denies.

22 13. Denies the allegations of ¶ 16 as vague, overbroad, lacking in definition of the legal
23 terminology used, failing to establish that all Respondents or which Respondents are agents,
24 servants, or employees. To the extent the allegations of ¶ 16 relate to other Respondents, a
25 response from AHB is not required, or if deemed to be required, AHB denies.

26 14. Denies the allegations of ¶ 17 as they may relate to NBLA and AHB. To the extent
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1 that the allegations are directed to Respondents other than NBLA or AHB, a response from AHB
2 is not required or if deemed to be required, AHB denies.

3 15. The allegations of ¶¶ 18-24 appear to be directed to Respondents other than AHB for
4 which an response from AHB is not required, or if deemed to be required, AHB denies.

5 16. Responding to the allegations of ¶ 25:

6 (a) denies the allegations for lack of specificity as to which Respondents are alleged to
7 have engaged in the recited conduct, as speculative and lacking in allegations of fact that provide
8 notice to Respondents. To the extent that the allegations of ¶ 25 are directed to Respondents
9 other than AHB, no response from AHB is required, or if deemed to be required, AHB denies.

10 (b) To the extent that ¶ 25 is directed at AHB, AHB is without knowledge to admit or
11 deny the allegations and affirmatively alleges that consumers are contacted only after consumer
12 has inquired about AHB. Consumers must fill out an inquiry form (via various websites, but not
13 via NBLA's website) and consent to be contacted. Third party markets purchase "leads" from
14 outside parties. Leads are not owned nor controlled by AHB.

15 (c) Denies the allegations that there are "boiler room" solicitations and affirmatively
16 alleges that NBLA contracts with AHB and requires AHB to follow laws. AHB, in turn, requires
17 the call centers to follow applicable law, *e.g.*, that call centers are legitimate and licensed. AHB
18 also uses a script that is reviewed and approved by the insurance companies, independent voice
19 recording [IVR] verifications, fulfillment kits, 30 day "free look," etc., to allow the consumer to
20 make an informed decision about the membership offered.

21 17. Denies the allegations of ¶ 26 that are "upon information and belief" as speculation,
22 lacking in specific allegations of fact that provide notice to Respondents, and lacking in
23 specificity as to which Respondents are alleged to have engaged in the recited conduct. To the
24 extent that the allegations of ¶ 26 are directed to Respondents other than AHB, no response from
25 AHB is required, or if deemed to be required, AHB denies. To the extent that ¶ 26 is directed at
26 AHB, is without any knowledge to admit and therefore denies.

1 18. The allegations of ¶ 27 appear to be directed to Respondents other than AHB for
2 which no response from AHB is required, or if deemed to be required, AHB denies.

3 19. Admits the allegations of ¶ 28 that AHB was a contracted vendor with NBLA; admits
4 that AHB is not licensed as administrator or medical care discount card provider; denies that
5 AHB is required to have either license and affirmatively alleges that Montana does not regulate
6 medical care discount card “providers”; denies that NBLA offers “products” and affirmatively
7 alleges that NBLA offers memberships; denies the remaining allegations of ¶ 28.

8 **Complainants**

9 20. For each of the following Complainants, the Notice only provides Respondents with
10 the initials of the complaining individuals. AHB has made its best efforts to match initials to
11 members names to prepare the following responses, and has relied upon the Department’s verbal
12 confirmation through counsel, but nevertheless qualifies its responses accordingly.

13 21. Responding to the allegations of ¶ 29 which relate to NBLA member J.M., AHB:

14 (a) is without knowledge to admit or deny the date of conception, but understood that
15 J.M. was pregnant at the time she became an NBLA member and therefore denies; and
16 affirmatively alleges that J.M. acknowledged in an interview recorded at the time of purchasing
17 her NBLA membership that she understood that there was a preexisting exclusion in the limited
18 medical benefit coverage available to her through her membership;

19 (b) is without information to admit or deny the alleged conversation with NBLA’s
20 representative that “NBLA would reduce her hospital bills by 70 percent through negotiations
21 with the hospital,” and therefore denies; and affirmatively alleges that representatives describing
22 NBLA membership are required to read and not deviate from a written script approved by the
23 insurance companies offering insurance through the NBLA membership which through an IVR
24 confirms the members’ understanding of the terms and limitations of the membership and
25 insurance coverages accessed through the membership. Additionally new members receive a
26 fulfillment kit shortly after joining NBLA and have a 30-day “free look” during which the
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1 member can review all materials and cancel the membership if the member so desires.

2 (c) denies that J.M. paid “premiums” to NBLA or AHB and affirmatively alleges that she
3 paid \$1490 in NBLA membership fees and \$100 for her enrollment fee all of which were
4 refunded to her;

5 (d) denies that NBLA never contacted the hospital or attempted to lower J.M.’s medical
6 bills; and affirmatively allege that NBLA representatives had numerous conversations regarding
7 hospital negotiations; NBLA verified member had all of the information for filing claims and had
8 case opened with hospital negotiations service. Regrettably J.M. refused to cooperate with NBLA
9 or the hospital bill negotiating company any further;

10 (e) is without knowledge to admit or deny that J.M.’s claims were denied and that she
11 was left with \$20,000 in medical bills and therefore denies; and affirmatively alleges that to the
12 best of AHB’s knowledge, J.M. did not file a claim with the insurance carrier, US Life Insurance
13 Company;

14 (f) is without knowledge to admit or deny that J.M.’s credit was adversely affected and
15 therefore denies.

16 22. Responding to the allegations of ¶ 30 which relate to NBLA member F.C., AHB:

17 (a) denies that NBLA solicited F.C. via the internet; and affirmatively allege that NBLA
18 only uses telephone contacts responsive to prospective member inquiries. F.C. had to and did
19 consent to be contacted;

20 (b) admits that F.C. was enrolled by Otis Chapman;

21 (c) is without information to admit or deny the allegation that “F.C. asked that he not be
22 enrolled until he could review a fulfillment package and sign an application for insurance” and
23 therefore denies; and affirmatively allege that all members are offered a 30-day “free look”
24 during which they may reconsider their decision to become an NBLA member;

25 (d) denies that F.C. did not give authorization to charge his account; and affirmatively
26 alleges that NBLA has voice verification of F.C.’s consent and notice of when withdrawals
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1 would begin;

2 (e) is without knowledge to admit or deny whether checks were “bounced” from F.C.’s
3 account or that it was necessarily closed and therefore denies.

4 23. Responding to the allegations of ¶ 31 which relate to NBLA member C.C., AHB:

5 (a) admits that C.C. was an NBLA member from October 1 through December 30, 2008;

6 (b) is without information to admit or deny the circumstances surrounding C.C.’s
7 membership calls and therefore denies; and affirmatively alleges that C.C. would have had to
8 request being contacted by NBLA, NBLA representatives are required to follow a specific script
9 approved by the insurance company which does not encourage people to drop existing coverage
10 nor are sales people allowed to “bully” people into joining NBLA memberships;

11 (c) admits that claims records reflect that C.C. suffered a fracture on November 7, 2008,
12 and submitted claims for insurance benefits. C.C. received payments from US Life under the
13 limited benefit medical insurance of \$3,438.14 for accident claims submitted in January 2010.
14 C.C. also utilized the pharmacy benefit on 4 different occasions saving her \$134.18. GTL denied
15 C.C.’s accident claim for failure to timely file a claim, which was required within 60 days of the
16 accident and was not filed until January 18, 2010. An appeal was filed with GTL February 16,
17 2010, and it again denied in March or April 2010;

18 (d) denies or is without knowledge to admit or deny the remaining allegations of ¶ 31 and
19 therefore denies.

20 24. Responding to the allegations of ¶ 32 which relate to NBLA member B.Q., AHB:

21 (a) is without information to admit or deny what B.Q. may recall from his telephone
22 conversations with NBLA’s representative and therefore denies;

23 (b) denies that B.Q. did not get his fulfillment package until about 3 months after
24 beginning to pay premiums; and affirmatively allege that NBLA records show it sent out his
25 fulfillment package the day after he enrolled (or November 10, 2010);

26 (c) denies that the NBLA plan in which B.Q. was enrolled pays or adjudicates claims; and
27

1 affirmatively alleges that B.Q. was eligible for the limited medical insurance benefits in his
2 membership plan, underwritten by LINA. The policy states that it will pay \$50 for an annual
3 physical exam. NBLA records verify that B.Q. filed no claims with his insurer, LINA. Records
4 also show that B.Q. utilized the Delta Dental insurance included in his membership on January 5,
5 2011.

6 25. Denies the allegations of ¶ 33 which relate to NBLA member R.J., AHB:
7 affirmatively allege that representatives describing NBLA membership are required to read and
8 not deviate from a written script approved by the insurance companies offering insurance through
9 the NBLA membership. Additionally new members receive a fulfillment kit shortly after joining
10 NBLA and have a 30-day “free look” during which the member can review all materials and
11 cancel the membership if the member so desires.

12 26. Responding to the allegations of ¶ 34 which relate to NBLA member K.M., AHB:

13 (a) is without information to admit or deny what K.M. may recall from his telephone
14 conversations with NBLA’s representatives and therefore denies;

15 (b) affirmatively alleges that neither NBLA nor AHB has a record of a “John” associated
16 with K.M. from the Dallas call center; representative describing NBLA membership are required
17 to read and not deviate from a written script approved by the insurance companies offering
18 insurance through the NBLA membership; additionally new members receive a fulfillment kit
19 shortly after joining NBLA and have a 30-day “free look” during which the member can review
20 all materials and cancel the membership if the member so desires; NBLA utilizes a voice
21 verification which discloses important limitations and exclusions of the member’s selected plan;
22 K.M.’s voice verification supports these disclosures were made, acknowledged and confirmed.

23 **Conclusions of Law**

24 27. Answering the proposed conclusions of law ¶¶ 1-40, AHB affirmatively alleges that
25 no response from it is required, or if deemed to be required, AHB denies. AHB further
26 specifically responds to the proposed Conclusions in the paragraphs that follow.

1 28. Answering the proposed Conclusion of Law in ¶ 1, admits the State Auditor is the *ex*
2 *officio* Montana Commissioner of Insurance [Commissioner] and denies any other conclusion of
3 law express or implied.

4 29. Admits Conclusions of Law as stated in ¶ 2.

5 30. Answering the proposed Conclusion of Law in ¶ 3, admits 33-1-311, MCA, states the
6 Commissioner's general statutory powers and duties and denies any other conclusion of law
7 express or implied.

8 31. Proposed Conclusion of Law ¶ 4 is a paraphrased statement of statutory law to which
9 no response is required, or if deemed to be required, AHB denies. AHB further affirmatively
10 alleges that 33-1-311(3), MCA must be read, construed, and applied in conjunction with the
11 other subsections of 33-1-311, MCA, and is not to be given priority or emphasis over other
12 subsections of 33-1-311, MCA.

13 32. Proposed Conclusion of Law ¶ 5 is a paraphrased statement of statutory law of which
14 AHB denies any conclusion express or implied.

15 33. AHB is without knowledge to admit or deny the conclusion in the first sentence of
16 proposed Conclusion of Law ¶ 6 as it relates to AHB as the Department fails to allege any
17 specific facts that would tend to support the proposed conclusion as it relates to AHB or a
18 definition of the times material to the agency action. The second sentence of proposed
19 Conclusion of Law ¶ 6 is a paraphrased statement of statutory law of which AHB denies any
20 conclusion express or implied.

21 34. Denies proposed Conclusion of Law ¶ 7 as to AHB. To the extent the conclusion of
22 law is directed to Respondents other than AHB, a response from AHB is not required, or if
23 deemed to be required, AHB denies.

24 35. Proposed Conclusion of Law ¶ 8 appears to be directed to Respondents other than
25 AHB for which a response from AHB is not required, or if deemed to be required, AHB denies.

26 36. Responding to proposed Conclusion of Law ¶ 9:
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1 (a) denies ¶ a. correctly states the holding in *Peschel Family Trust v. Colonna*, 2003
2 MT 216 ¶ 24, 317 Mont. 127, 75 P.3d 793;

3 (b) responding to ¶ b., denies that any of the named individuals were the alter ego,
4 instrumentality, or agent of AHB; denies that AHB's officers and directors were the alter ego or
5 instrumentality of AHB; and denies that AHB's officers and directors were agents of AHB
6 except as authorized under the business corporation laws of Montana and its state of domicile;

7 (c) responding to ¶ c., denies that AHB has been used as a subterfuge by its officers and
8 directors, any of the individuals named in ¶ 9, or individuals who have been named as
9 Respondents in the agency action;

10 (d) asserts that the Department has failed to offer any specific facts that tend to support
11 the proposed conclusion as it relates to AHB; and

12 (e) as proposed Conclusion ¶ 9 may relate to Respondents other than AHB, a response
13 from AHB is not required, or if required, AHB denies.

14 37. Responding to proposed Conclusion of Law ¶ 10 denies that AHB was engaged in
15 the business of insurance or transacted the business of insurance and therefore proposed
16 conclusion of law is inapplicable to AHB. AHB further responds to the subparagraphs of
17 Conclusion ¶ 10 as follows:

18 (a) denies the introduction to ¶ 10 is an accurate quotation of 33-1-102(1), MCA, and
19 any other conclusion of law express or implied;

20 (b) admits ¶ a. is an accurate quotation of 33-1-201(5)(a), MCA, and denies any other
21 conclusion of law express or implied;

22 (c) because AHB sold no products, subparagraph ¶ b. appears to be directed to
23 Respondents other than AHB for which a response from AHB is not required, or if deemed to be
24 required, AHB denies;

25 (d) admits ¶ c. is an accurate quotation of 33-1-202(3), MCA, and denies any other
26 conclusion of law express or implied;

1 (e) admits proposed Conclusion of ¶ d. that AHB is a “person” under 33-1-202(3) and
2 denies any other conclusion express or implied; is without knowledge to admit or deny the
3 conclusion as it may relate to the remaining Respondents and therefore denies;

4 (f) denies ¶ e. correctly quotes the definition of “transact” and denies any other
5 conclusion of law express or implied derived from the quote; denies AHB was engaged in the
6 transaction of insurance; denies any other conclusion express or implied derived from ¶ e;

7 (g) denies ¶ f. as it relates to AHB; is without knowledge to admit or deny the
8 conclusion as it may relate to the remaining Respondents and therefore denies;

9 (h) asserts that the Department has failed to offer any specific facts that tend to support
10 the proposed conclusion as it relates to AHB; and

11 (i) as proposed Conclusion ¶ 10 may relate to Respondents other than AHB, a response
12 from AHB is not required, or if required, AHB denies.

13 38. Admits proposed Conclusion of Law ¶ 11 correctly quotes 33-1-1202(4) and denies
14 any other conclusion of law express or implied.

15 39. Denies proposed Conclusion of Law ¶ 12 as it relates to AHB. AHB denies that it
16 accepted premium money and affirmatively alleges that it did properly and fully disclose the
17 nature of NBLA memberships and the insurance coverage accessible to NBLA members. The
18 limited medical benefit policies that were available to and purchased by members provided the
19 coverage represented in the policy. The CLIC policy that was available to and purchased by
20 members provided the coverage represented in the policy. As proposed Conclusion ¶ 12 is
21 directed to Respondents other than AHB, a response from AHB is not required, or if deemed to
22 be required, AHB denies.

23 40. Admits proposed Conclusion of Law ¶ 13 is a substantially accurate quotation of 33-
24 1-1302(1)(a) and denies any other conclusion of law express or implied.

25 41. Denies proposed Conclusion of Law ¶ 14 as it relates to AHB. AHB denies that it
26 accepted premium money and affirmatively alleges that it did properly and fully disclose the
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1 nature of NBLA memberships and the insurance coverage accessible to NBLA members. The
2 limited medical benefit policies that were available to and purchased by members provided the
3 coverage represented in the policy. As proposed Conclusion ¶ 14 is directed to Respondents other
4 than AHB, a response from AHB is not required, or if deemed to be required, AHB denies.

5 42. Admits proposed Conclusion of Law ¶ 15 is a substantially accurate quotation of 33-
6 18-201(1) and denies any other conclusion of law express or implied.

7 43. Denies proposed Conclusion of Law ¶ 16 as it relates to AHB: AHB is not engaged
8 in the business of insurance as required by 33-18-102 (1), MCA; the Department fails to allege
9 specific facts as to AHB that support the proposed conclusion; and the proposed Conclusion ¶ 16
10 proposes as a conclusion of law assertions of irrelevant and unsupported speculations. As
11 proposed Conclusion ¶ 16 is directed to Respondents other than AHB, a response from AHB is
12 not required, or if deemed to be required, AHB denies.

13 44. Denies proposed Conclusion of Law ¶ 17 is an accurate quotation of 33-18-203,
14 MCA, and any other conclusion of law express or implied.

15 45. Proposed Conclusion of Law ¶ 18 is directed to Respondents other than AHB, for
16 which a response from AHB is not required, or if deemed to be required, AHB denies.

17 46. Admits proposed Conclusion of Law ¶ 19 is a substantially accurate quotation of 33-
18 18-204, MCA, and denies any other conclusion of law express or implied.

19 47. Denies proposed Conclusions of Law ¶ 20 if it is intended to relate to AHB. NBLA
20 disclosures to members state that the member should not cancel existing insurance until materials
21 have been read. As proposed Conclusion ¶ 20 is directed to Respondents other than AHB, a
22 response from AHB is not required, or if deemed to be required, AHB denies.

23 48. Proposed Conclusion of Law ¶ 21 appears to be directed to Respondents other than
24 AHB for which a response from AHB is not required, or if deemed to be required, AHB denies.

25 49. Proposed Conclusions of Law ¶¶ 22-24 appear to be directed to Respondents other
26 than AHB and a response from AHB is not required. If a response from AHB is deemed to be
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1 required AHB denies and further asserts that if proposed Conclusions ¶¶ 22-24 are adopted, AHB
2 was without any knowledge that Respondent insurers issued policies to NBLA members in
3 violation of any insurance law.

4 50. Admits the first two sentences of proposed Conclusion of Law ¶ 25 are a
5 substantially accurate quotation of 33-1-501(10), MCA and denies any other conclusion of law
6 express or implied derived from the quotation; is without knowledge to admit or deny the truth of
7 the final sentence of ¶ 25 and therefore denies.

8 51. Proposed Conclusion of Law ¶ 26 appears to be directed to Respondents other than
9 AHB for which a response from AHB is not required. If deemed to be required, AHB denies and
10 further asserts that if proposed Conclusions ¶ 26 is adopted, AHB was not responsible for, had no
11 knowledge of, nor had a responsibility to know of Respondents' form approval status.

12 52. Denies proposed Conclusion of Law ¶ 27 correctly quotes 33-17-603, MCA; asserts
13 that 33-17-603, MCA, must be read with and incorporate the definitions stated in 33-17-102,
14 MCA, and the chapter's scope as set forth in 33-17-101, MCA; and denies any conclusion
15 express or implied derived from the statute quoted as proposed.

16 53. Denies proposed Conclusion of Law ¶ 28 as it relates to AHB; denies that AHB is an
17 insurer or administrator under the applicable statutes; is without information to admit or deny the
18 conclusion as it relates to IMAC and therefore denies.

19 54. Denies proposed Conclusion of Law ¶ 29 correctly quotes 33-17-201, MCA, and any
20 conclusion express or implied derived from it as quoted.

21 55. Responding to proposed Conclusions of Law ¶ 30, AHB: denies that it was engaged
22 in the business of transacting insurance; denies that it had "products" to market; denies that it or
23 its officers and directors, utilized unlicensed producers to market insurance products; therefore
24 denies that it had instituted a business practice to market insurance products in violation of
25 Montana law; asserts that the Department has failed to allege specific facts to support the
26 proposed conclusion of law and is without information to admit or deny the proposed conclusion
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1 as it relates to other named Respondents and therefore denies.

2 56. Proposed Conclusion of Law ¶ 31 appears to be directed to Respondents other than
3 AHB for which a response from AHB is not required, or if deemed to be required, AHB denies.

4 57. Admits proposed Conclusions of Law ¶¶ 32-33 are accurate but incomplete quotes of
5 33-17-231 (1), and - 236(1), MCA, and denies any other conclusion of law express or implied.

6 58. Proposed Conclusions of Law ¶¶ 34-35 appear to be directed to Respondents other
7 than AHB for which a response from AHB is not required, or if deemed to be required, AHB
8 denies.

9 59. Denies proposed Conclusions of Law ¶¶ 36-37. Denies that AHB sold insurance and
10 asserts the conclusion that NBLA was the policyholder of the subject policies; therefore licensure
11 and appointment from Respondent insurers was not necessary or required. Denies that AHB is
12 an insurer and therefore appointment of Respondent producers by AHB was not necessary or
13 permissible. AHB denies any other conclusion of law express or implied.

14 60. Proposed Conclusion of Law ¶ 38 appears to be directed to Respondents other than
15 AHB for which a response from AHB is not required, or if deemed to be required, AHB denies.

16 61. Denies proposed Conclusion of Law ¶ 39 correctly quotes from 33-17-1001, MCA,
17 and denies any conclusion express or implied derived from it.

18 62. Denies proposed Conclusion of Law ¶ 40 is supported by facts related to AHB and
19 Tim Siewert as neither AHB nor Tim Siewert sold or transacted or received commissions for the
20 sale or transaction of insurance in Montana. The remaining allegations of proposed Conclusion
21 ¶ 40 is directed to Respondents other than AHB for which a response from AHB is not required,
22 or if deemed to be required, AHB denies.

23 63. Except as specifically admitted, AHB denies each and every other fact allegation or
24 proposed conclusion of law.

25 **THIRD AND AFFIRMATIVE DEFENSES**

26 64. The Notice fails to allege facts with sufficient specificity to support the proposed
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1 conclusions of law.

2 65. The Notice fails to identify the times material to the Agency Action.

3 66. The Notice fails to state a violation of law by Respondent AHB for which the
4 proposed penalties can be imposed.

5 67. AHB has not offered and does not offer “products.” AHB’s client NBLA offers
6 memberships which then provides the member eligibility to access certain services and products
7 through their membership.

8 68. AHB has not transacted and does not transact the business of insurance in Montana
9 or any state. AHB has not received and does not receive commissions or compensation of any
10 kind from the transaction of insurance in Montana or any state.

11 69. AHB is contracted with NBLA to provide assistance in NBLA operations, including
12 but not limited to member program development, administrative services, and marketing support.
13 AHB contracts with independent vendors, including call centers located throughout the United
14 States, to provide marketing support to NBLA. AHB’s administrative support does not include
15 collection of premiums or charges for insurance or insurance claims processing or adjusting.

16 70. AHB conducts no business in the state of Montana that is subject to the regulation of
17 Title 33, chapter 17. AHB is not an “administrator” as defined by 33-17-102 (3), MCA, because
18 it does not “collect charges or premiums from residents of this state in connection with life,
19 disability, property, or casualty insurance or annuities or adjusts or settles claims on these
20 coverages.”

21 71. NBLA, AHB, their officers and directors, and the authorized Respondent insurance
22 companies did not violate 33-17-201, MCA, by instituting a business practice of utilizing
23 unlicensed producers to market their products. NBLA delegated compliance to AHB. AHB
24 delegated that to actual license holders, *i.e.*, call centers. Call centers were reviewed and
25 approved by insurers who have the ultimate responsibility for licensing and appointment. To the
26 best of NBLA and AHB’s knowledge the call centers followed and complied with licensing
27

1 requirements and procedures prepared by and received from the insurance companies.

2 72. AHB is not “engaged in the business of insurance” as required by 33-18-102, MCA,
3 and therefore the provisions of Title 33, chapter 18, MCA, do not apply to AHB.

4 73. If it is concluded that Title 33, chapter 18, MCA, applies to AHB, which AHB
5 denies, section 33-18-201 (1), MCA, prohibits “frequent” misrepresentation that “indicates a
6 general business practice.” The Department has offered no facts tending to prove AHB engaged
7 in conduct to or with NBLA members satisfying the required legal elements of prohibited
8 misrepresentation under the Unfair Claims Settlement Practices Act.

9 74. Insurance fraud under 33-1-1202 (4), MCA, requires the “accept[ance] of premium
10 money knowing that coverage will not be provided.” The legal standard does not include an
11 implied “reasonable expectations of the consumer” doctrine. The Department has offered no
12 facts tending to prove AHB engaged in conduct to or with its members satisfying the required
13 legal elements. AHB has not offered and does not offer insurance, has not accepted and does not
14 accept premium money, and, upon information and belief, understands that insurance coverages
15 offered by Respondent insurers was and are provided.

16 75. Insurance fraud under 33-1-1302, MCA, requires misrepresentation of “a material
17 fact, know to the person to be untrue or made with reckless indifference as to whether it is true,
18 with the intention of causing another person to rely upon the misrepresentation to that relying
19 person’s detriment.” The legal standard does not include an implied “reasonable expectations of
20 the consumer” doctrine. The Department has offered no facts tending to prove AHB engaged in
21 conduct to or with NBLA members satisfying the required legal elements of misrepresentation.
22 NBLA’s scripts, recordings, fulfillment materials, pre-approval by carriers, other state approvals
23 (including its domiciled state, which is supposed to be given deference), NBLA’s contract with
24 AHB, and AHB’s requirements of contracted entities are proof to the contrary.

25 76. AHB is not “engaged in the business of insurance,” as required by 33-18-102, MCA,
26 to come within the scope of the Unfair Trade Practices Act, and therefore the provisions 33-18-

1 203, MCA, do not apply to AHB. If it is concluded that 33-18-203, MCA, applies to AHB,
2 which AHB denies, AHB contracted third party marketers clearly disclose to prospective NBLA
3 members and members the nature of the benefits available to the member, including insurance
4 benefits. The Department has offered no facts tending to prove AHB engaged in advertising or
5 conduct to or with its members that untrue, deceptive, or misleading disclosures were made to
6 prospective or active members. NBLA's scripts, recordings, fulfillment materials, pre-approval
7 by carriers, other state approvals (including its domiciled state, which is supposed to be given
8 deference) are proof to the contrary.

9 77. AHB was a contracted vendor with NBLA. Neither NBLA nor AHB is licensed as
10 an administrator or medical care discount card "provider" in Montana. NBLA and AHB are
11 excluded from the applicable definitions of "administrator" and "medical care discount card
12 supplier" of the Montana Insurance Code and therefore registration as either is not required.

13 78. AHB is a Georgia for profit corporation that assists in NBLA operations, member
14 program development and other administrative services. AHB does not adjudicate claims, act as
15 a third party administrator, pay benefits, collect premiums, or receive commissions on any
16 insurance products.

17 79. No individual is solicited to become an NBLA member without the individual's
18 consent. NBLA uses only telephone responses to prospective member inquiries. At the point of
19 member enrollment, NBLA representatives use an IVR verification system to record the
20 member's acknowledgment and confirmation of their understanding of the terms and conditions
21 as well as the exclusions and limitations of the group insurance benefits available to them
22 specific to their selected membership. All IVR's are audited by NBLA representatives for
23 compliance.

24 80. No automatic withdrawals for membership dues from a NBLA member's account are
25 made without the member's consent. NBLA obtains IVR confirmation of the member's
26 understanding of the automatic withdrawal if used.

1 81. Montana CSI does not have personal jurisdiction over AHB.

2 82. No Montana citizens were damaged by AHB. Damages to Montana citizens, if any,
3 were caused by entities or persons other than AHB and not controlled by AHB.

4 83. Some claimed allegations and conclusions of law of the Notice against AHB, or all of
5 them, are barred by applicable statutes of limitation.

6 84. AHB affirmatively alleges the following defenses: lack of subject matter jurisdiction,
7 accord and satisfaction, arbitration and award, estoppel, failure of consideration, fraud, illegality,
8 laches, license, payment, release, res judicata, statute of frauds, and waiver. AHB alleges these
9 defenses not to make or raise issues where none exist, but merely to preserve these defenses
10 should discovery and prehearing preparation reveal they are applicable. Should discovery and
11 prehearing preparation reveal that any of these affirmative defenses are not applicable, AHB will
12 eliminate those affirmative defenses from its contentions in the final prehearing order or
13 otherwise.

14 85. AHB reserves the right to assert additional affirmative defenses as may be
15 appropriate upon completion of its investigation and discovery.

16 **RELIEF REQUESTED**

17 Respondent AHB prays for relief as follows:

- 18 1. That AHB be afforded a hearing on the Department's Notice;
19 2. That the Department's Notice be dismissed with prejudice as to AHB by reason of
20 Mont. R. Civ. P. 4B and 12(b)(2) lack of personal jurisdiction;
21 3. That the Department's Notice as to AHB be dismissed with prejudice;
22 4. That AHB be awarded its costs and attorneys fees associated with defending this
23 action;
24 5. That AHB be awarded any other relief as the Hearing Examiner deems just and proper.

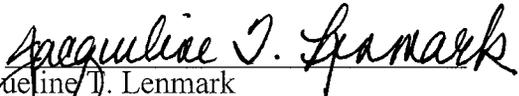
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1 DATED this 9th day of September, 2011.

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KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.

BY: 
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Helena, Montana 59624
Attorney for Respondents National Better
Living Association, Inc. *et al*

1 CERTIFICATE OF SERVICE

2 I, Jacqueline T. Lenmark, attorney for Respondents National Better Living Association,
3 Inc., Allied Health Benefits, Inc., George E. Spalding, Jr., Angus Morrison, Timothy Siewert,
4 Michael Siewert, John Fabbrini, John B. "Barry" Shaw, Jr., and G. Dan Siewert, III, certify that
5 on September 9, 2011, I served a true and correct copy of the foregoing **ANSWER AND**
6 **REQUEST FOR HEARING - ALLIED HEALTH BENEFITS, INC.**, by mailing it first class
7 postage prepaid to:

8
9 Mike Winsor
10 Office of the Commissioner of
11 Securities and Insurance
12 State Auditor's Office
13 840 Helena Avenue
14 Helena, MT 59601

Richard See Holson, III, Chairman,
President and CEO
Guarantee Trust Life Insurance Company
1275 Milwaukee Avenue
Glenview, IL 60025

12 Susan Paulson-Davis
13 Records Clerk
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15 Securities and Insurance
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12 Trescott Newton Hinton, Jr.,
13 President and CEO
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15 P.O. Box 100102
16 Columbia, SC 29223-5666

Barbara Harrington
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Huntington Beach, CA 92648

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27
28 DATED this 9th day of September, 2011.


Jacqueline T. Lenmark