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Attorney for the Department of Insurance

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

IN THE MATTER OF:	)	Case No. INS 2007-79
)	
NATIONAL ALLIANCE OF ASSOCIATIONS, a.k.a.)	
NATIONAL TRADE BUSINESS ASSOCIATION,	)	NOTICE OF AGENCY
a.k.a. NATIONAL TRANSPORTATION BENEFITS	)	ACTION AND
ALLIANCE ASSOCIATION, a.k.a. NATIONAL TRADE	)	OPPORTUNITY FOR
BUSINESS ALLIANCE OF AMERICA, a.k.a.	)	HEARING
ALLIANCE ASSOCIATION HEALTH, a.k.a.)	
QUALIFIED ADMINISTRATIVE SPECIALISTS OF	)	(RESTITUTION,
AMERICA, a.k.a. AMERICAN EMPLOYERS	)	ADMINISTRATIVE
ASSOCIATION, a.k.a. NATIONAL ALLIANCE	)	FINES; PERMANENT
HEALTHCARE, a.k.a. HEALTHCARE ALLIANCE, a.k.a.	)	CEASE AND DESIST
ASSOCIATION HEALTH CARE MANAGEMENT INC.,	)	ORDER; AND
a.k.a. AFFINITY HEALTH PLANS OF AMERICA, a.k.a.	)	SUSPENSION OR
ALLIANCE HEALTH, a.k.a. AFFINITY HEALTH,	)	REVOCATION OF
a.k.a. AFFINITY ASSOCIATION GROUP, a.k.a.	)	PRODUCER AND
NATIONAL ASSOCIATION OF PRIVATE	)	ADMINISTRATOR
ENTERPRISE, a.k.a. ALLIANCE ASSOCIATION	)	LICENSES)
HEALTH, a.k.a. NATIONAL ALLIANCE OF)	
ENTREPRENEURS;)	
)	
PROFESSIONAL BENEFITS CONSULTANTS OF)	
DELAWARE, a.k.a. PROFESSIONAL BENEFITS)	
CONSULTANTS INC., a.k.a. PBC DIRECT, a.k.a.)	
PERSONAL BENEFITS CONSULTANTS INC.;)	
)	
THOMAS J. SULLIVAN; JAMES DOYLE;)	
CHRISTOPHER ASHIOTES; ROBERT FORTIER;)	
MICHAEL B. ROBERTS; and DAWN MAAHS;)	
individually and/or in their capacities as officers, directors)	
or agents of the above-named entities;)	
)	
ACCESS ONE CONSUMER HEALTH INC., CAREY)	
DANIEL ADAMS; and JULIAN STUART CRAWFORD;)	

individually and/or in their capacities as officers, directors)
or agents of the immediately foregoing entities;)
))
SEBRITE AGENCY INC.; MINNESOTA E-BIZ;)
DIRECT SERVICES ASSOCIATION; DP HEALTH)
MANAGEMENT SERVICES LLC; WORLDWIDE)
INSURANCE AND REINSURANCE SERVICES INC.;)
PRO-TEC ADMINISTRATORS/ENHANCEMENT)
SERVICES INC.; CONSUMER ALLIANCE USA, a.k.a)
CAUSA; PROFESSIONAL RISK AND ASSET)
MANAGEMENT INSURANCE SERVICES INC.; SMART)
DATA SOLUTIONS LLC; AFFINITY GROUP BENEFITS)
ASSOCIATION INC.;)
))
RICHARD RANDALL, JR.; TONY DENNIS; CODY)
KOTKE; RANDY TROLLOP; DENISE WISHCOP;)
CHRIS NOVINGER; JOHN VANHARA; YAMIL D.)
EMEDAN; CHRISTOPHER HUMMER; CARMEN JOY;)
AL KLINE; DEREK A. SEIWERT; JERRY SARVADI,)
a.k.a GERALD SARVADI; MARK KUHL; SCOTT)
INTRAVIA; CAMERON STRONG; MICHAEL)
SACKETT and DAVID P. WILSON; BART POSEY;)
RICHARD BACHMAN; OBED KIRKPATRICK; EARNEST)
BEAL, individually and/or in their capacities as officers,)
directors or agents of the immediately foregoing entities;)
))
CONSOLIDATED WORKERS ASSOCIATION INC.;)
CONSOLIDATED WORKERS RISK RETENTION)
GROUP; CLAIMS AND BENEFIT MANAGEMENT)
INC., a.k.a CLAIMS MANAGEMENT SERVICE, a.k.a)
CBM ADMINISTRATORS, a.k.a. CBMC;)
HEALTHCARE RECOVERY SYSTEMS, INC.;)
INTEGRATED HEALTH BENEFITS; NATIONAL)
ALLIANCE OF BENEFIT SERVICES ASSOCIATION;)
WALTER CECCHINI; BRAD WESSLER;)
individually and/or in their capacities as officers, directors)
or agents of the immediately foregoing entities;)
))
PAYLOGIX, LLC; RICHARD PFADENHAUER,)
JAMES HOUSE, MARK LANGSTON, and)
LEE DELORENZO, individually and/or in their)
capacities as officers, directors or agents of PAYLOGIX;)
))
Respondents.)

RESPONDENTS PLEASE TAKE NOTICE:

Staff of the Insurance Department of the Office of the State Auditor and Commissioner of Insurance of the state of Montana, pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, *et seq.*, is proposing that the Commissioner take disciplinary action against the Respondents for violations of the Montana Insurance Code. Specifically, staff is proposing that the Commissioner:

1. issue a permanent Cease and Desist Order;
2. require Respondents to make full restitution to Montana citizens for all financial losses sustained as a result of fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302;
3. impose an administrative fine of not less than \$5,000 and not more than \$25,000 for each day Respondents marketed, sold, or distributed medical care discount cards in this state without a certificate of registration pursuant to Mont. Code Ann. § 33-38-105;
4. impose an administrative fine of \$5,000 for each violation and the revocation or suspension of nonresident producer and agency license of each Respondent who has a nonresident license for up to five (5) years, for violations of §§ 33-17-201, 33-17-411 and 33-17-1004, pursuant to Mont. Code Ann. §§ 33-1-317, 33-17-411 and 33-17-1001;
5. suspend or revoke the certificate of registration for Paylogix, a licensed administrator, pursuant to Mont. Code Ann. § 33-17-1001(a),(c), (f),(l) and fine Paylogix no more than \$25,000 for each violation;
6. impose a fine not to exceed \$25,000 for each violation of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana, pursuant to Mont. Code Ann. § 33-1-317.

The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-318, 33-1-1202, 33-1-1211, 33-1-1302, 33-2-104, 33-17-201, 33-17-411, 33-17-603, 33-17-1001, 33-17-1004 and 33-38-105.

ALLEGATIONS OF FACT

I. Multiple Respondents Acted in Concert to Violate the Insurance Code

1. At all times material, Respondents are or were affiliated persons and entities who, in concert, offered, sold, and distributed medical care discount cards in the state of Montana without holding certificates of registration, transacted the business of insurance in Montana without a certificate of authority to at least 57 Montana insurance consumers through unlicensed producers, aided and assisted in that regard, or acted as third party administrators in the state of Montana without certificates of registration.

2. At all times material hereto, each Respondent was the agent, servant, employee, or in some other legal relationship to the others, whereby legal liability is imputed from one party to the other.

3. At all times material hereto, Respondents, and each of them, were acting within the course and scope of their agency, servant or employee relationships.

4. At all times material hereto, the entities named herein were or are used as a subterfuge to justify the wrongs or perpetrate the fraud alleged herein.

A. NAA and PBC

5. National Alliance of Associations (NAA) purports to provide disability (“health”) insurance, accidental death benefits, and distributes medical care discount cards to consumers. NAA is not a licensed insurer or medical care discount card supplier in Montana.

6. At various times, NAA has done business under various names including, but not necessarily limited to, the following: National Trade Business Association, National Transportation Benefits Alliance Association, National Trade Business Alliance of America, Alliance Association Health, Qualified Administrative Specialists of America, American Employers Association, National Alliance Healthcare, Healthcare Alliance, Association Healthcare Management, Inc., Affinity Health Plans of America, Alliance Health, Affinity Health, Affinity Association Group, National Association of Private Enterprise, and National Alliance of Entrepreneurs.

7. At all times material hereto, NAA and all of its aliases listed above in Paragraph 2 did business at 141 Ganttown Road, Turnersville, NJ 08012. Whenever reference is made herein below to NAA, it is understood to include and refer to NAA acting under any or all of its aliases.

8. At all times material hereto, Professional Benefits Consultants of Delaware, a.k.a. Personal Benefits Consultants, Inc., a.k.a. Professional Benefits Consultants, Inc., d.b.a. PBC Direct (PBC), like NAA, also did business at 141 Ganttown Road, Turnersville, NJ, 08012.

9. Whenever reference is made herein below to PBC, it is understood to include and refer to PBC acting under any or all of its aliases as listed in Paragraph 4 above.

10. PBC is primarily engaged in the business of marketing and distribution of health insurance and medical care discount card products for NAA but has also acted as an administrator in Montana by automatically withdrawing money from Montana consumers' accounts.

11. PBC is not licensed to transact insurance in Montana or to solicit or sell medical care discount cards. PBC does not have an administrator license, a producer license, or any other license in Montana.

12. NAA and PBC are operated by the same individuals from the same addresses, with the same phone numbers.

13. At all times material hereto, Thomas J. Sullivan (Sullivan) was president of NAA and incorporator agent of PBC; James Doyle (Doyle) was secretary and treasurer of NAA and vice-president of operations for PBC; Christopher Ashiotes (Ashiotes) was a vice-president, marketing director, and insurance producer for PBC, and owned the property where NAA and PBC operated; Robert Fortier (Fortier) was a compliance officer and a director of NAA as well as a vice-president of Access One Consumer Health Inc. (Access One); Michael B. Roberts was an officer and director of compliance and training for NAA; Dawn Maahs was a director of NAA and a licensed producer in several states not including Montana.

B. Access One, Medical Care Discount Card

14. NAA and/or PBC contracted with Access One to provide the medical care discount card component of the NAA bundled product.

15. Access One is located at 84 Villa Road, Greenville, SC 29615. Carey Daniel Adams is president and Julian Stuart Crawford is secretary and treasurer of Access One.

16. Access One did not obtain a certificate of registration as a medical care discount card supplier in the state of Montana prior to the solicitation and sale of its products in Montana.

17. Consumers were not given a thirty-day right to cancel membership for the medical care discount card.

18. The discount card did not state that the product was not insurance in bold and prominent type of at least 14 points in size.

19. Montana consumers were not given access to a list of health care providers who were contractually bound to honor the medical care discount card prior to the consumers' purchase.

20. The NAA/Access One plan medical care discount card product did not have participating medical providers in Montana who were contractually bound to honor the card.

C. Producer Agencies, TPA's, Associations, and "Limited Benefit" Insurance Policies

21. In the original plans sold to Montana consumers, three producer agencies obtained limited group medical benefit insurance to insure three associations which were affiliated with or within the producer agencies' control. The insurance products were bundled with the Access One medical care discount card and sold to the general public. Solicitors told Montana consumers they were purchasing NAA comprehensive health insurance and after purchasing the NAA product consumers were informed that they were so-called "members" of the various associations who had purchased "limited benefits" and discounts.

22. "Limited benefits" was a term used by NAA which referred to what were basically accident, mini-med, or hospital indemnity policies policies bundled with discount products.

23. These producer agencies were Sebrite Agency Inc. (Sebrite), Worldwide Insurance and Reinsurance Inc. (Worldwide), and Professional Risk and Asset Management Inc. (PRAM).

24. The original associations were Minnesota E-Biz corporation (formed by Sebrite), Direct Services Association (DSA), affiliated with Worldwide, and Consumer Alliance USA (CAUSA) (affiliated with PRAM).

25. In later plans sold to Montana consumers, the associations DSA and CAUSA were replaced by Affinity Group Benefits Association Inc. (AGBAI) and Consolidated Workers Association (CWA).

Sebrite, Minnesota E-Biz and the NUFIC “Flex Shield” Policy

26. Sebrite is a Minnesota corporation and has a producer agency license in Montana for property and casualty but is not licensed for health insurance.

27. Dick Randall is president and owner of Sebrite and Minnesota E-Biz. Tony Dennis is vice-president of Sebrite. Cody Kottke was the Sebrite agent responsible for processing insurance identification cards for the NAA health plan product and has a producer license in Montana. Randy Trollop was affiliated with Sebrite as a compliance officer involved with NAA. Denise Wishcop was treasurer of Sebrite and has a Montana insurance producer license.

28. On or about June 1, 2007, Tony Dennis, on behalf Sebrite and Minnesota E-Business Association, entered into an affiliation agreement with Thomas Sullivan of NAA to contract for the procurement of a “Flex Shield” employee benefit plan from AIG subsidiary National Union Fire Insurance Company (NUFIC) for Minnesota E-Biz members; the plan was procured later that month. Minnesota E-Biz did not have any employees.

29. According to the agreement, NAA was authorized to solicit and sell the product as a sub-producer for Sebrite. AIG/NUFIC was not a party to the affiliation agreement and did not authorize NAA as a sub-producer for Sebrite. After it discovered the affiliation with NAA, NUFIC terminated the policy.

CAUSA, Sebrite/Minnesota E-Biz, PRAM, and the Guarantee Trust Life “Blanket Accident Coverage” Policy

30. Consumer Alliance USA Inc. (CAUSA) is a Missouri corporation. Mark C. Kuhls is president of CAUSA, Cameron Strong is vice-president, and Michael Sackett is secretary and treasurer. All three of the foregoing individuals are members of CAUSA’s board of directors. Scott Intravia was a vice-president of CAUSA as well as a director of NAA.

31. Professional Risk and Asset Management Insurance Services Inc. (PRAM) was a California corporation and has a Montana producer agency license.

32. Scott Intravia was an officer and director of PRAM as well as a vice-president of CAUSA. David P. Wilson is the CEO and a director of PRAM. David P. Wilson has a Montana producer license for the lines of life, disability, property and casualty. Michael Sackett was a director of PRAM and the secretary and treasurer of CAUSA.

33. On April 28, 2007, Tony Dennis, of Sebrite Agency and Minnesota E-Biz, and Mark Kuhls on behalf of CAUSA, signed an affiliation agreement whereby the parties agreed to affiliate for the purpose of representing to NAA purchasers that they were covered by a Guarantee Trust Life “Blanket Accident Coverage” policy. The Guarantee Trust Life policy was issued to CAUSA as the policyholder.

34. Scott Intravia, on behalf of PRAM, brokered the procurement of the Guarantee Trust life policy for CAUSA and was listed as the agent of record for the master policies issued to CAUSA.

35. The Guarantee Trust Life policy sold to Montana NAA purchasers and provided in fulfillment packages was not approved for sale in Montana.

Worldwide, Pro-Tec/ESI, DSA, and the Presidential Life Accident/Emergency Room Policy

36. At all times material hereto, Worldwide Insurance and Reinsurance Services Inc. (Worldwide) was a producer agency located in Lewisburg, Pennsylvania. Worldwide is not licensed to transact insurance in Montana.

37. Yamil D. Emedan was president and CEO of Worldwide, Christopher Hummer was vice-president, Carmen Joy was vice-president of finance, and Al Kline was the director of brokerage operation.

38. Pro-Tec Administrators/Enhancement Services Inc. (Pro-Tec/ESI) was a third party administrator incorporated in Texas and located in Jacksonville Florida. Pro Tec/ESI does not have a Montana administrator's license

39. Derek A. Siewert was president of Pro Tec/ESI, and Gerald Sarvadi was a director and owner. .

40. Direct Services Association (DSA) is a South Carolina corporation. Chris Novinger is the president of DSA.

41. DSA is managed by DP Health Management Services, LLC, a Nevada company located in Las Vegas. John Vanhara is the managing member of DP Health Management Services, LLC.

42. NAA affiliated with Worldwide in order to procure an Accident/Emergency Room policy for DSA in order to bundle it with the other NAA benefits. The policy was issued on

January 1, 2007. Worldwide represented to Presidential that the association DSA was an employer group and that the policy would only be sold in South Carolina. Pro-Tec/ESI was purportedly the third-party administrator.

43. After receiving calls from NAA members, Presidential learned that DSA was affiliated with and was marketing the benefit through NAA with which Presidential had no relationship. Presidential immediately ordered DSA to cease and desist all marketing through NAA.

**SDS, AGBAI, and the Transamerica Life Insurance Company
TransChoice Policy**

44. Smart Data Solutions, LLC (SDS), is a Tennessee corporation located in Springfield, Tennessee. Bart Posey is president of SDS and Richard Bachman is vice-president. Obed Kirkpatrick is an agent of SDS. SDS, Bart Posey and Richard Bachman are not licensed in any capacity by the Department of Insurance.

45. Affinity Group Benefits Association, Inc. (AGBAI) is a North Carolina corporation with an office in Concord, North Carolina. Ernest B. Beal is the owner, president and registered agent of AGBAI.

46. Late July of 2007, Bart Posey and Obed Kirkpatrick told Ernest B. Beal that they had a large number of individuals who were ready to enroll in an association for insurance benefits and persuaded Beal to “loan” them the use of AGBAI so that they could offer insurance to individuals and employers.

47. In August 2007, AGBAI entered into a marketing service agreement with SDS pursuant to which SDS was responsible for marketing and the day-to-day operations of AGBAI

including development of marketing plans to obtain new members, and hiring marketing organizations to approach new potential members, and administration.

48. Additionally, under the agreement, SDS's responsibilities were to: a) negotiate for services and products on AGBAI's behalf; b) make health insurance benefits available to AGBAI members; c) bill and collect monthly dues and insurance premiums for all members; d) handle and send fulfillment packages (including insurance cards and explanations of benefits) to new members; and e) provide live customer support operators and licensed representatives at its offices in Tennessee.

49. SDS employees were not licensed producers in Montana and SDS was not a registered administrator or licensed in any capacity by the Department.

50. On September 4, 2007, Richard Bachman submitted an application for a TransChoice policy to Transamerica Life Insurance Company (Transamerica) to be issued to AGBAI. Also on September 4, 2007, AGBAI and SDS executed a Premium Collection Agreement which authorized SDS to serve as AGBAI's premium collection administrator. As such, SDS's duties included the handling of all insurance premium billing and collection matters for AGBAI.

51. Around September 4, 2007, Transamerica issued a TransChoice Plus group policy to AGBAI to be sold in North Carolina with an effective date of September 1, 2007. The TransChoice policy provides limited benefits rather than comprehensive health insurance.

52. On September 25, 2007, AGBAI entered into an affiliation agreement with NAA which purportedly authorized AGBAI to provide NAA members the TransChoice Plus group policy that AGBAI offered its members and required NAA to collect AGBAI-affiliated member dues from NAA members and remit those dues to AGBAI.

53. Transamerica was unaware of the affiliation agreement between NAA and AGBAI; yet, NAA, PBC, SDS, and their agents and affiliates sold the TransChoice product to the general public nationally and in Montana via illegal and unauthorized fax blast solicitations. NAA, PBC, SDS, and their principals also prepared to rollover existing NAA enrollees into the TransChoice policy issued to AGBAI.

54. SDS began collecting premiums directly from the bank accounts of NAA members in January of 2008.

55. On February 13, 2008, as a result of discovering the NAA connection and receiving consumer complaints, Transamerica terminated Bachman's appointment as a Transamerica producer and informed SDS and Bachman that it would not accept any new enrollments in connection with AGBAI.

CWA, CWRRG, CBM, CBMC, NABSA and IHB

56. At all times material hereto, Consolidated Workers Association (CWA) was a Delaware corporation formed by Walter Cecchini (Cecchini) who also formed a Washington, D.C. corporation about the same time with the same name. Consolidated Workers Risk Retention Group (CWRRG) was a Delaware risk retention group formed by Cecchini. Cecchini was president of CWA and CWRRG. Cecchini is not licensed as an insurance producer in Montana. CWA and CWRRG are not licensed or registered by the Department in any capacity.

57. In one of NAA's more recent fulfillment packages, the "Plan Book" materials indicate that Imagine Re Insurance Company, an unauthorized offshore Reinsurance company, in association with Consolidated Workers Association, under group name Consolidated Workers RRG, was an underwriter of the insurance benefits named in the "Plan Book."

58. Some NAA members were rolled over to CWA membership.

59. It appears that PBC operated as an administrator for CWA.

60. CWA entered into an “Association Affiliation Agreement” with Claims and Benefit Management, Inc. (CBM) on or about November 13, 2007. At or around the same time CBM also entered into an “Administration & Service Agreement” with CWRRG.

61. CBM, in turn, also had an “Association Affiliation Agreement” with NAA whereby CBM licensed NAA to use its name and authorized NAA to collect NAA member premiums and remit the same to CBM.

62. CBM, a.k.a CBMC, is a California corporation owned by Brad Wessler who is its CEO and president. CBM also does business as Claims Management Service and CBM Administrators. Brad Wessler also does business as Healthcare Recovery Systems, Inc. (HRSI), National Alliance of Benefit Services Association (NABSA), Integrated Health Benefits (IHB).

63. CBM is an unlicensed administrator while Wessler’s companies, NABSA, and IHB appear to be companies that solicit unauthorized bundled insurance and medical care discount card products. Wessler does not have a Montana insurance producer license or any other license issued by the Department.

Paylogix LLC

64. Paylogix, LLC (Paylogix) acted as an administrator by taking withdrawals from Montana members’ bank accounts on behalf NAA. After NAA received the payments from Paylogix, NAA sent the premiums to SDS, net of NAA’s fees.

65. Paylogix is a New York-domiciled life and health administrator and was issued an Administrator’s Certificate of Registration by this Department.

66. Richard Pfhadenhauer is the president of Paylogix, James House is the vice-president, Mark Langton is the treasurer, and Lee Delorenzo is the secretary.

67. On July 20, 2006, Paylogix entered into an Administrative Service Agreement with NTBAA. Thomas Sullivan signed the agreement as President of NTBAA. Paylogix continued the relationship after NTBAA changed its name to NAA.

II. Fraudulent Solicitation

68. At all times material hereto, the Respondents contracted with various enrollers to market and solicit their products through mass “fax blasting” (sending unsolicited faxes) nationwide and in Montana in violation of the Montana Consumer Protection Act, specifically Mont. Code Ann. § 30-14-1501. These entities misrepresented the products sold to Montana consumers, consisting of individuals and employers, in a manner which led consumers to believe that they were purchasing comprehensive health insurance.

69. All of the fax solicitations obtained by the Department of Insurance, with some variations in format, purport to offer \$25 out-of-pocket discounted doctor visits, monthly premiums for individuals of \$199, monthly premiums for couples ranging from \$279 to \$299, and monthly premiums for families ranging from \$349 to \$369 together with an enrollment fee of \$125.

70. The fax solicitations represent that the product is insurance and “not discount healthcare,” and offer 60% off eye exams, hearing aids, and glasses; discounts on prescription drugs and medical supplies; \$10,000 accidental injury coverage; and \$20,000 accidental death coverage. Some of the faxes represented that the company would cover ground and air emergency medical transportation and 100% of surgery schedule.

71. When Montana consumers called the number listed on the faxes, they were told that they would not be given any additional information unless they gave enrollers their bank account numbers, their routing numbers, their bank name and their social security numbers for automatic withdrawals.

72. Consumers were told by NAA solicitors that the NAA product was underwritten either by Ace, Aetna, American Medical, Guaranteed Trust Life, or AIG, yet, in its membership and policy materials NAA represented that it provided coverage underwritten by National Union Fire Insurance Company of Pennsylvania, Presidential Life Insurance Company, Guarantee Trust Life Insurance Company, TransAmerica Insurance Company, Imagine Re Insurance Company, Consolidated Workers Association, National Union Fire Insurance Company, and NAA itself.

73. Although NAA is not a licensed insurance company and did not have contracts with licensed insurers to provide health insurance coverage to its members, the Respondents, either individually or through their agents, presented NAA to Montana consumers as a validly licensed insurance company.

74. The Respondents, either individually or through their agents, led Montana consumers to believe that they were purchasing comprehensive or major medical health insurance. The Respondents accepted premiums from Montana consumers knowing that comprehensive coverage would not be provided.

75. Respondents represented that they were affiliated with Beechstreet when, in fact, they were not.

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. A person or entity may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the Montana Insurance Code. Mont. Code Ann. § 33-1-102(1).
6. Insurance is as a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies. Mont. Code Ann. § 33-1-201(5).
7. The “insured benefit” component of the NAA product constituted insurance because the product purports to indemnify members or pay a specified or determinable amount or benefit for medical expenses upon determinable contingencies. Mont. Code Ann. § 33-1-201(5).
8. No person or entity shall act as an insurer and/or transact insurance in Montana except as authorized by a certificate of authority issued by the Commissioner. Mont. Code Ann. § 33-2-101.
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. Each of the respondents are persons as defined by Mont. Code Ann. § 33-1-202.

10. An insurer includes every person or entity engaged as an indemnitor, surety, or contractor in the business of entering into contracts of insurance. Mont. Code Ann. § 33-1-201(6). NAA/PBC, CAUSA, CWA, and the individuals responsible acted as an insurers because they received consideration for, and promised to pay members' medical expenses in the event of certain contingencies.

11. "Transact," with respect to insurance, includes any of the following: (a) solicitation and inducement; (b) preliminary negotiations; (c) effectuation of a contract of insurance; or (d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it. Mont. Code Ann. § 33-1-201.

12. NAA, PBC, CWA and the individuals associated therewith have transacted insurance in Montana by soliciting sales through mass faxing and the internet, negotiating sales of the NAA product, accepting consideration in exchange for the NAA product, and sending insurance identification cards and membership materials to purchasers.

13. By acting as insurers and transacting insurance in Montana without a certificate of authority, NAA, PBC, CAUSA, CWA and the individuals associated therewith have committed multiple violations of Mont. Code Ann. § 33-2-101.

14. No person may directly or indirectly act as an insurance producer for, or otherwise represent or aid on behalf of another, any insurer not authorized to transact insurance in this state in the solicitation, negotiation, or effectuation of insurance contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or any other transaction of

insurance with respect to subjects of insurance resident, located or to be performed in this state.
Mont. Code Ann. § 33-2-104.

15. By representing or aiding an unauthorized insurer, all of the Respondents, other than NAA, PBC and CWA, have committed multiple violations of Mont. Code Ann. § 33-2-104.

16. 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. Mont. Code Ann. § 33-38-105.

17. "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. Mont. Code Ann. § 33-38-102.

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

19. NAA, PBC, Access One, and the individuals named herein as officers, directors, or agents of the same are medical discount card suppliers who have committed multiple violations of Mont. Code Ann. § 33-38-105 by marketing or promoting a medical card discount plan in the state of Montana without first applying for and receiving a certificate of registration.

20. NAA, Access One, and the individuals named herein as their officers, directors, or agents violated Mont. Code Ann. § 33-38-104(1) by failing to give consumers a thirty-day right to cancel memberships.

21. NAA, Access One, and the individuals named herein as their officers, directors, or agents 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.

22. NAA, Access One, and the individuals named herein as their officers, directors, or agents violated Mont. Code Ann. § 33-38-103(1)(c) by failing to provide purchasers or users, prior to purchase of the medical care discount card, access to a list of health care providers, including the name, city, state and provider type.

23. 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.

24. Respondents, pursuant to a common scheme, conspired, and committed multiple violations of Mont. Code Ann. § 33-1-1302 by representing that the offered products provided coverage which was not provided. 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 consumer's detriment.

25. A person commits the act of insurance fraud when the person accepts premium money knowing that coverage will not be provided. Mont. Code Ann. § 33-1-1202(4).

Respondents, pursuant to a common scheme, conspired, and violated Mont. Code Ann. § 33-1-1202(4), by representing that their products provided coverage which was not provided.

26. PBC and CBM violated Mont. Code Ann. § 33-17-603 by failing to obtain certificates of registration before acting as third party administrators.

27. A certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation. Mont. Code Ann. § 33-17-603(4).

28. Paylogix violated Mont. Code Ann. § 33-17-603(4) by engaging in the activities set forth above with the other entities and individuals named herein as respondents.

29. Codky Kotke and Denise Wishcop engaged in acts for which issuance of their licenses could have been refused, violated provisions of the Insurance Code, used dishonest practices in the conduct of the affairs under their licenses, and are a source of injury to the public.

30. The Commissioner may suspend or revoke the nonresident producer licenses of Cody Kotke and Denise Wishcop for their involvement with NAA and may levy a civil penalty against them pursuant to Mont. Code Ann. § 33-17-1001(1)(a),(c),(f).

31. The Commissioner may suspend or revoke the producer agency licenses of Sebrite Agency and PRAM Insurance Services Inc. for violations of the Insurance Code, as set forth hereinabove pursuant to Mont. Code Ann. § 33-17-1001, and levy a civil penalty of up to \$5,000 for each violation of the Code against the same pursuant Mont. Code Ann. § 33-1-317.

RELIEF REQUESTED

WHEREFORE, the Department requests:

1. that a permanent cease and desist order be issued against the individual Respondents named herein, under the organizational titles identified herein or any other organizational title, entity or successor entities controlled by or affiliated with them;

2. all Respondents, jointly and severally, be required to make full restitution to Montana citizens who purchased the NAA product for all financial losses sustained as a result of insurance and medical care discount card fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302;

3. an administrative fine of \$25,000 be imposed upon Respondents for each day of violation for violations of Mont. Code Ann. § 33-38-105;

4. a penalty of up to \$5,000.00 for each violation of Title 33 and suspension or revocation of the nonresident producer licenses Cody Kottke and Denise Wishcop, for a period of up to five (5) years pursuant to Mont. Code Ann. §§ 33-1-317, 33-17-411 and 33-17-1001;

5. a fine of \$25,000 of each violation of Title 33 by Paylogix, in addition to other fines and the suspension or revocation of Paylogix administrator's license;

6. a fine of \$1,500, in addition to other fines imposed, for violations of Mont. Code Ann. § 33-17-603 by PBC and CBM;

7. an administrative fine not to exceed \$25,000 be imposed against each Respondent other than the licensed nonresident producers for each of the violations of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana pursuant to Mont. Code Ann. § 33-1-317;

8. suspension or revocation of the producer agency license of PRAM Insurance Services and Sebrite Agency pursuant to Mont. Code Ann § 33-17-1001; and

9. any other such additional relief as justice requires.

STATEMENT OF RIGHTS

You are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to 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 as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Ave., Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the State of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice*, *Application of American Smelting and Refining, Co.*, 164 Mont. 139, 520

P.2d 103 (1973); and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. Jerry O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael Winsor, Attorney for the Department of Insurance, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 3rd day of September, 2009.



Michael Winsor
Attorney for the Department of Insurance

CERTIFICATE OF SERVICE

I certify that this 4 day of SEPTEMBER 2009, a true and correct copy of the foregoing Notice of Agency Action and Opportunity for Hearing was served on the following by certified mail with postage prepaid and return receipt requested.

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