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OFFICE OF THE MONTANA STATE AUDITOR  
COMMISSIONER OF SECURITIES AND INSURANCE

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In the matter of	)	
PRIME THERAPEUTICS, LLC,	)	CASE NO:
Respondent.	)	
	)	<b>NOTICE OF PROPOSED AGENCY</b>
	)	<b>ACTION AND OPPORTUNITY FOR</b>
	)	<b>HEARING</b>
	)	

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TO: PRIME THERAPEUTICS, LLC  
c/o Nick Mazanec  
Luxan & Murfitt, PLLP  
P.O. Box 1144  
24 West 6<sup>th</sup> Avenue, 4<sup>th</sup> Floor  
Helena, MT 59624

PRIME THERAPEUTICS, LLC  
c/o Mike Kolar, Senior VP, General Counsel  
1305 Corporate Center Dr.  
Eagan, MN 55121

PLEASE TAKE NOTICE:

The Office of the Montana State Auditor, Commissioner of Securities and Insurance (“CSI”), pursuant to the authority of the Montana Insurance Code (“Code”), Mont. Code Ann. § 33-1-101 et seq., is proposing to the Commissioner of Securities and Insurance, Montana State Auditor (“Commissioner”), that he take specific action against Prime Therapeutics, LLC (“Respondent”) for violations of the Code.

### **REASONS FOR ACTIONS**

There is reasonable belief that the following facts will be proven true and justify disciplinary action against Respondent; including, but not limited to, a fine not to exceed \$25,000 per violation under § 33-1-317, and an additional \$5,000 per violation under § 33-1-318, plus a fine between \$500 and \$1,500 under § 33-17-603(5). The Commissioner has authority to take such action under the provisions of §§ 33-1-311, 33-1-317, 33-1-318, 33-17-602, 33-17-603, and 33-17-1001. Service of process is pursuant to § 33-1-314.

### **ALLEGATIONS OF FACT**

1. Respondent is a foreign limited liability company that acts as an administrator in the state of Montana.
2. Respondent applied for a certificate of registration as an administrator with the CSI by way of letter dated October 7, 2013.
3. On October 8, 2013, the CSI Examinations Bureau notified Respondent that copies of the executed agreements required by § 33-17-602 must be submitted with Respondent's application for a certificate of registration.
4. Again, on February 11, 2014, the CSI Examinations Bureau notified Respondent to submit copies of the executed agreements required by § 33-17-602.
5. Respondent failed and refused to submit copies of the agreements required by § 33-17-602.
6. On November 11, 2014, by way of letter, CSI notified Respondent that its application had been withdrawn from the licensing process. Consequently, Respondent does not hold a certificate of registration to act as an administrator.

7. Despite the fact that Respondent does not hold a certificate of registration, pursuant to § 33-17-603, Respondent continued to act as an administrator, and has done so through the present.
8. By way of letter dated October 3, 2017, CSI delivered an information request to Respondent pursuant to § 33-1-315. Respondent failed and refused to fully produce the information and documentation requested by CSI.
9. CSI's October 3, 2017, information request was made pursuant to §§ 33-1-315 and 33-17-611, which states that the Commissioner shall have access to an administrator's books and records for examination, audit, or inspection. Failure or refusal to produce the information requested by CSI is grounds to suspend, revoke, refuse to renew, or refuse to issue a certificate of registration, pursuant to § 33-17-1001.
10. In March of 2018, CSI discovered that Respondent had not cured the deficiencies in its application for a certificate of registration. CSI notified Respondent, by way of letter dated March 26, 2018, that Respondent did not hold a certificate of registration to act as an administrator, and further, urged Respondent to apply for a certificate of registration.
11. On April 6, 2018, Respondent applied for a certificate of registration to act as an administrator, however, Respondent has not complied with CSI's October 3, 2017, information request. Pursuant to §§ 33-17-603 and 33-17-1001, CSI cannot issue a certificate of registration to Respondent unless and until Respondent complies with the October 3, 2017, information request.
12. According to Respondent's records, between January 1, 2013, to April 18, 2018, Respondent had adjusted or settled 5,937,468 claims in violation of Montana law. Respondent continues to adjust and settle claims in violation of Montana law. Each claim adjusted and settled by Respondent constitutes a separate violation of the Montana Insurance Code.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 33-1-311, 33-1-317, 33-1-318, 33-17-603, and 33-17-1001.
2. The Commissioner administers the Code pursuant to § 33-1-311.
3. “Administrator” means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages. § 33-17-102(3)(a).
4. “Person” includes, but is not limited to, an individual and/or a corporation. § 33-1-202(3).
5. A person may not act as or represent to the public that the person is an administrator unless the person holds a certificate of registration as an administrator. § 33-17-603.
6. A person who acts as an administrator without a certificate of registration is subject to a fine of not less than \$500 or more than \$1,500. § 33-17-603.
7. The Commissioner may, after having conducted a hearing pursuant to § 33-1-701, impose a fine of up to \$25,000 upon the Respondent if he finds that Respondent has violated a provision of the Code. This fine is in addition to all other penalties imposed by the laws of this state and must be collected by the Commissioner in the name of the state of Montana. § 33-1-317.
8. In addition to the fine set forth in § 33-1-317, the Commissioner may fine the Respondent up to \$5,000 per violation of the Code. § 33-1-318.
9. The Commissioner may suspend, revoke, refuse to renew, or refuse to issue a certificate of registration if an administrator or an applicant has violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the Commissioner or of the Commissioner of any other state. § 33-17-1001(c).

10. The Commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by the insurance code against any person who is under investigation for or charged with a violation of the insurance code even if the person's license or registration has been surrendered, suspended, revoked, refused, or denied or has lapsed. § 33-17-1001(3).

11. Respondent is a "person" for purposes of § 33-1-202(3).

12. Respondent is an "administrator" for purposes of § 33-17-102(3)(a), because it adjusts or settles claims relating to the pharmacy benefit component of health insurance plans.

13. From January 1, 2013, through the present, Respondent has failed to hold a certificate of registration to act as an administrator in accordance with § 33-17-603.

14. On April 6, 2018, Respondent applied for a certificate of registration to act as an administrator. At present, CSI could not issue a certificate of registration to Respondent, because Respondent has failed to comply with the October 3, 2017, information request from CSI, which violates §§ 33-1-315, 33-17-1001(a) & (c).

15. Each claim adjusted or settled by Respondent without a certificate of registration constitutes a separate violation of the Montana Insurance Code, for which the Commissioner may fine the Respondent up to \$25,000 under § 33-1-317, and an additional fine of up to \$5,000 for each violation under § 33-1-318(3).

16. The Commissioner may order the Respondent to cease and desist from continuing the acts or practices alleged herein. § 33-1-318(1)(a).

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### **RELIEF REQUESTED**

WHEREFORE, the CSI seeks the following relief:

1. That the Commissioner fine Respondent in an amount not to exceed \$25,000 for each identifiable violation of the Montana Insurance Code, pursuant to § 33-1-317.
2. That the Commissioner fine Respondent up to \$5,000 for each violation of the Code pursuant to § 33-1-318.
3. That the Commissioner impose of fine of not less than \$500 or more than \$1,500 pursuant to § 33-17-603(5).
4. That the Commissioner issue a permanent cease and desist order to restrain Respondent from continuing to act as an administrator pursuant to § 33-1-318(1)(a).
5. That the Commissioner suspend, revoke, or refuse to issue a certificate of registration as an administrator to Respondent pursuant to §§ 33-17-603 and 33-17-1001.
6. Such other relief as the Commissioner deems necessary and appropriate.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, and to present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, § 2-4-601 et seq., including § 2-4-631. If you demand a hearing, you will be given notice of the time, place, and the nature of the hearing.

If you wish to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within 21 days of the date you receive this notice. You must advise the Commissioner of your intent to contest the proposed action by **writing** to Derek

Oestreicher or Mike Winsor, Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly state whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to § 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. Should you request a hearing on the matters raised in this Notice, a hearing must be held within a reasonable period of time unless by mutual consent of the parties.

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, and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

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

If you have questions or wish to discuss this matter, please contact Derek Oestreicher or Mike Winsor, Office of the Montana State Auditor, 840 Helena Avenue, Helena, MT 59601, 406-444-4328. If an attorney represents you, please make any contacts with this office through your attorney.

### **POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within 21 days will result in the entry of a default order imposing the disciplinary sanctions against you without further notice to you, pursuant to Mont. Admin. R. 6.2.101, and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 20<sup>th</sup> day of June, 2018.



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DEREK J. OESTREICHER  
Attorney for the Department of Insurance