

2002

Gerald G. Ide v. Utah Insurance Department : Reply Brief

Utah Court of Appeals

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FILED
Utah Court of Appeals

JUL 14 2003

Paulette Stagg
Clerk of the Court

IN THE UTAH COURT OF APPEALS

GERALD G. IDE,

Petitioner,

vs.

UTAH INSURANCE DEPARTMENT,

Respondent.

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Appeal No. 20020981-CA

REPLY BRIEF OF PETITIONER

**Petition for Review From Order Revoking Insurance License
Before the Insurance Commissioner of the State of Utah**

**M. Gale Lemmon
Enforcement Counsel
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ARGUMENT

I. INTRODUCTION

The central message of this Reply Brief is that the Utah Insurance Department does not cure the fundamental problems leading to the license revocation decision with the arguments made in its Brief. Major legal problems remain. Those problems include the shifting of the burden of proof to Ide to prove he was not selling insurance and the failure to present positive affirmative evidence that the economic operation of Privilege Care was insurance within the meaning of the Utah Code. This Reply Brief further demonstrates that the marshaling argument is without legal force because the argument is made about evidence, even when taken in the light most favorable to the decision, that has no legal weight.

II. REBUTTAL EVIDENCE NOT REQUIRED WHERE ALLEGATION IS DENIED

The Insurance Department argues that once it presented its *prima facie* case, “the burden of going forward shifted to Mr. Ide to establish any affirmative defenses he may have.” (Brief of Appellee at 15). However, Mr. Ide asserted no affirmative defenses. Therefore, no burden should be shifted to him.

It is well-settled that there are generally three types of defenses: (1) affirmative defenses; (2) burden-dividing defenses; and (3) denials. *See* 29 Am Jur2d Evidence § 160 (2003). A defendant has the burden of proving counterclaims and most affirmative defenses. *See Rees v. Archibald*, 311 P.2d 788, 791 (Utah 1957). Nevertheless, Mr. Ide’s assertion that

he was selling the services of a PEO is not an affirmative defense; it is a denial, requiring no production of affirmative evidence. *See Austin v. Memphis*, 684 S.W.2d 624, 635 (Tenn App 1984) (when defendant denies allegations, burden of proof is cast upon plaintiff).

An affirmative defense generally concedes a plaintiff's allegations, but asserts that although the allegations are true, the plaintiff is, nonetheless, not entitled to prevail for some other reason. *See Armstrong v. Johnson Motor Lines, Inc.*, 280 A.2d 24, 29 (Md. Spec. App. 1971). Mr. Ide asserted, in his answer, no affirmative defenses. (R. at 13). What Ide offered was an explanation of his sales activity to show why the Insurance Department was wrong in saying he sold insurance. Mr. Ide does not concede the allegations of the Insurance Department—he does not admit to assisting in the marketing of unauthorized insurance. In fact, Mr. Ide flatly denies these allegations.

A denial, where the defendant simply denies the truth of the allegations against him, does not obligate the defendant to prove anything affirmatively; the burden continues to rest on the plaintiff throughout the trial. *See John Ainsfield Co. v. Rasmussen*, 85 P. 1002, 1003 (Utah 1906) (where defendant denies material allegations of complaint, burden of proving allegations by a preponderance of evidence was on plaintiff, and if he fails to do so, or if evidence was equally balanced, he would not prevail); *see also* 29 Am Jur2d Evidence § 160 (denial does not oblige defendant to prove anything). Such is the case here. Mr. Ide denies the truth of the allegations against him—he denies that he assisted in the marketing of

unauthorized insurance. (R. at 13, “Respondent . . . denies violation of any applicable law”). Although he offered proof that he was selling the services of a PEO¹, he was, nonetheless, not required to prove that he did not assist in the marketing of unauthorized insurance.

No part of the burden should have been shifted to Mr. Ide, but it was. Although Mr. Ide never claimed that Privilege Care was ERISA-qualified, the presiding officer unequivocally required Mr. Ide to prove ERISA qualification. (R. at 120, ¶ 9). Nowhere in the Insurance Code or in any document provided to him, was Mr. Ide put on notice that he would be expected to prove ERISA qualification. The Insurance Department and the presiding officer unconstitutionally deprived Mr. Ide of his property right in his insurance license by failing to provide notice of what Mr. Ide would be expected to prove at the hearing.

In *State Bd. of Funeral Directors v. Oliver H. Bair Co.*, 41 Pa. D. & C.2d 751 (Pa. Dauphin Ct. 1966), a funeral director’s license was suspended when the Board of Funeral Directors alleged that advertisements for the funeral home were deceptive. The court in that case held that the burden was not on the funeral director to prove the advertisements were *not* misleading, but rather was on the Board to show, by the fair weight of the evidence, that the advertisements *were*, indeed, misleading. *See Bair*, 41 Pa. D. & C.2d at 755-56. Further, according to the *Bair* court, it is not enough to conclude there was a violation by merely

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¹(For example, R. at 403, 91-114).

inspecting the advertisements; the Board's burden included offering actual evidence that the advertisements deceived someone. *See id.*

Like in *Bair*, the burden in this case is not on Mr. Ide to prove that Privilege Care is *not* insurance, but rather is on the Insurance Department to show, "by the fair weight of the evidence," that Privilege Care *is*, indeed, insurance. Moreover, it is not enough for the Department and its witnesses to simply testify that they *believed* that Privilege Care is insurance; the Department's burden includes offering *actual evidence* that Privilege Care *is* insurance. This was not done. Instead, Mr. Ide's due process rights were infringed by shifting to him the nearly impossible burden of proving a negative. More than mere money is at risk here; Mr. Ide's livelihood is at stake—something to which one cannot assign a dollar amount. *See Painter v. Abels*, 998 P.2d 931, 941 (Wyo. 2000) (potential loss of license is more substantial than loss of money).² Due care and due process must be observed to see that Mr. Ide is not unjustly deprived of that priceless interest.

III. INSURANCE CODE DOES NOT PROVIDE FOR BURDEN-SHIFTING

The Insurance Department cites three cases in support of its assertion that the burden of going forward shifted to Mr. Ide to establish any affirmative defenses. (Brief of Appellee at 15). Putting aside the fact that Mr. Ide did not aver an affirmative defense, each of the

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²The *Painter* decision also includes an in-depth analysis of due process protections necessary to protect one's property interest in a professional license. *See Painter*, 998 P.2d at 941-42.

cited cases is completely inapposite. Each involved either a burden-shifting device or a burden-dividing defense. First, *State v. Swenson*, 838 P.2d 1136 (Utah 1992), is a criminal case concerning allegations of a securities code violation by an “agent.” In that case, a statute defining “agent” listed a three-pronged exception to the definition. *See Swenson*, 838 P.2d at 1137, *citing*, U.C.A. § 61-1-13(2) (1989 & Supp. 1990). A second statute affirmatively placed on the defendant the burden of establishing exemption under that exception. *See id.* at 1138, *citing*, U.C.A. § 61-1-14.5. Thus, the burden shifted in *Swenson* by operation of statute.

Second, *Topp v. Hayward*, 746 P.2d 783 (Utah 1987), also cited by the Department, likewise involves a burden-shifting statutory provision. *Topp* involved a habeas challenge to extradition, where the statute at issue specifically provided that an accused could challenge extradition and *show* that he is not a “fugitive from justice.” *See Topp*, 746 P.2d at 784, *citing*, U.C.A. § 77-30-10 (1982). Again, as in *Swanson*, a statute expressly placed the burden on the defendant. Thus, both of these cases involved statutory provisions that place part or all of the burden on a defendant.

Such is not the case here. The Insurance Code and relevant administrative rules place no burden on Mr. Ide. In fact, the only mention of burdens, statutory or otherwise, is contained in Utah Administrative Code R. 590-160-5(10), which places the burden to prove a violation by a preponderance of the evidence squarely on the shoulders of the Insurance

Department. The rule provides for no shifting of the burden. In fact, some courts hold that where one's professional license is at stake, the risk to the defendant of having his reputation erroneously tarnished justifies an *increase* in the plaintiff's burden of proof. *See Painter v. Abels*, 998 P.2d 931, 941 (Wyo. 2000), *citing*, *Addington v. Texas*, 441 U.S. 418, 424 (1979).

The third and final case cited by the Department, *Fretz v. Anderson*, 300 P.2d 642 (Utah 1956), involved two presumptions: (1) "presumption of life," asserted by the plaintiff and (2) presumption of negligence, asserted by the defendant as part of his affirmative defense of contributory negligence. A presumption may shift the burden of production as to a particular fact from one party to another, and may help a party to satisfy their burden of persuasion. *See Sanders v. Davila*, 593 S.W.2d 127, 130 (Tex Civ App 1979). In *Fretz*, the burden was shifted to defendant to: (1) rebut the presumption of life asserted by the plaintiff; and (2) go forward with evidence to establish his affirmative defense of contributory negligence. No such presumptions exist here. Therefore, the burden of going forward remains with the Department. *See Matter of Permits to Drain Related to Stone Creek Channel*, 424 N.W.2d 894, 898 (N.D. 1988) (holding that placement of burden of proof on moving party in administrative proceeding gives that party, *in absence of an operative presumption*, burden of going forward with proof as well as burden of persuasion).

Thus: (1) there are no presumptions for Mr. Ide to rebut; (2) there is no statutory provision affirmatively placing a burden on Mr. Ide; and (3) Mr. Ide did not assert a burden-

dividing defense. Therefore, the burden of proof was unfairly and unconstitutionally shifted to Mr. Ide to prove that he was *not* marketing insurance.

IV. THE INSURANCE DEPARTMENT FAILED TO SHOW THERE WAS UNAUTHORIZED INSURANCE

A. The Insurance Department Did Not Present Prima Facie Evidence of an Insurance Code Violation.

Even if Mr. Ide had asserted a burden-dividing defense, the Insurance Department failed to present prima facie evidence of a code violation. Prima facie evidence of a violation of statute requires that the burdened party prove facts sufficient to establish each element of a code violation. *See Godesky v. Provo City Corp.*, 690 P.2d 541, 547 (Utah 1984) (prima facie evidence is that quantum of evidence that "suffices for proof of a particular fact until the fact is contradicted by other evidence" (internal citations omitted)). In this case, then, the Department must prove: (a) Mr. Ide committed an enumerated act³ (b) that he knew or should have known may assist in the illegal placement of insurance (c) with an unauthorized insurer. U.C.A. § 31A-15-102. Inherent in these elements is the requirement that the Insurance Department first prove that Privilege Care is insurance. This element was not proven.

Instead, the Department asserts that the people signing up for the PEO *thought* it was insurance (R. at 403, 82), and that Department representatives *believed* that Privilege Care

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³ Examples of acts enumerated in U.C.A. § 31A-15-102, including soliciting insurance contracts, taking insurance applications, collecting insurance premiums, or issuing an insurance policy.

was insurance (R. at 403, 16-46, 56-75), while at the same time admitting they conducted no investigation to determine whether Privilege Care *was* insurance. (R. at 403, 67-75). This is prima facie evidence of *nothing*. See *Bair*, 41 Pa. D. & C.2d at 755-56. Therefore, had Mr. Ide asserted a burden-dividing defense, the Insurance Department's failure to present prima facie evidence of a code violation would mean that Mr. Ide need present *nothing* in order to prevail. Nonetheless, Mr. Ide asserted no affirmative defense and, thus, is still not required to affirmatively prove anything.

The fact remains that at a hearing to determine the fate of his professional license, Mr. Ide was forced to *prove* that he was selling the services of a PEO, and that he was *not* selling unauthorized insurance. The risk of non-persuasion should have been on the Insurance Department, and not on Mr. Ide.

B. The Evidence Has Been Properly Marshaled.

A reading of the brief of the Insurance Department shows that it continues to make the fundamental error that was made at trial. That is, it talks all around the requirement to show that Mr. Ide was actually selling unauthorized insurance, but never offers substantive evidence of insurance.

The Insurance Department makes a “red herring” argument about marshaling the evidence. (Brief of Appellee at 9-10). As will be shown next, these arguments are not legally sufficient.

There is no dispute between the parties as to the requirement imposed by case law from this court that an appellant challenging findings of fact is to identify every scrap of evidence in support of the lower finding and then explain why it is not legally sufficient.

The set of evidence to be marshaled in this case is not hard to determine. A decision was written by the presiding officer which was made an exhibit to the primary brief and was discussed at length in the text of that brief. (Brief of Petitioner at 14-20). Unlike an appeal from a trial by jury where an appellant needs to search the record to find evidence arguably supporting the decision, the written decision of the Presiding Officer in the underlying administrative trial here gives exactly the set of facts upon which that officer relied to make the decision. Those facts are presented to this court through the presentation of the written decision. Consequently, the first element of identifying or marshaling all of the facts which support the decision is clearly met. To hold otherwise would raise due process considerations where evidence not identified in the decision of the Presiding Officer would be given weight by the appellate court, thereby creating new grounds for the decision discovered only in hindsight on appeal.

The Insurance Department suggests that Ide falls short of marshaling all relevant facts by not having a sufficient discussion about the exhibits used at trial. The Presiding Officer lists each exhibit in his opinion at Record, pages 104-106. None of the information in these exhibits support the decision as has been discussed in the opening brief but is discussed in

detail below out of an abundance of caution that the marshaling requirement be met.

C. The Marshaling Argument is Conceptually Inapplicable.

The Insurance Department understandably attempts to move itself into a safe harbor by arguing that the marshaling was inadequate. That argument is made, however, in a context in which marshaling is a distraction from the fundamental conceptual error of analysis made by the Presiding Officer. A close look at the nature of the issue shows that even if Ide were to concede that all of the evidence is arguably evidence of insurance, such evidence would still be insufficient to revoke his agent license.

The problem with the reasoning of the Insurance Department can be demonstrated by analogy. Assume for a moment that it was illegal to sell sheep but one could freely sell horses. Assume that a sales person marketed a horse through literature that said the horse has four legs, eats grass, and moves in a herd. The sales person was then charged with trying to market sheep under the guise of calling it a horse. The evidence presented to establish the product was sheep were two investigators that looked at the descriptive sales literature and said that it sounded like a sheep to them because of the described characteristics, a customer testified that she thought she was buying a sheep, but nobody had ever looked at the horse to see it was actually a horse. That is what is happening here!

The complaint about marshaling under the facts of this administrative action misses the point entirely. Conceptually, Ide could even concede that all the so-called evidence at

the trial points towards the existence of an insurance program, but that has no legal impact whatsoever where nobody studied the actual operation of the PEO so that it could be declared insurance because of the way it operates in actually allocating risk. *See Bair*, 41 Pa. D. & C.2d at 755-56 (not enough to conclude there was a violation by inspecting document; actual evidence is required). A review of the testimony of the Privilege Care executive shows that he explained that it is an authorized program under federal law which can be used to give health benefits to participants in the program. (R. 15 403, 91-114).

The problem of overlapping concepts is demonstrated by the Insurance Department's use of the word "premium" in describing the payments for the PEO product sold. An examination of the exhibits shows that Privilege Care does not use that word anywhere. Instead, the word just appears in argument of the Insurance Department. While Ide uses the word loosely in a note at Record, page 154, what Ide thinks doesn't matter any more than if one selling a horse referred to it as a sheep. The product is still a horse and a PEO. One can search the record thoroughly and find no affirmative evidence that the payment was a premium in the sense of making a payment for an insurance risk. In fact, insurance investigator Hansen states at Record, page 435-436, that the PEO contractual agreement under which any payment was made, does not constitute insurance on its face. Calling a payment an insurance premium doesn't make it so. The Insurance Department should have presented evidence it was a premium for insurance.

D. The Exhibits Do Not Support A Finding of Insurance.

Turning to the exhibits themselves, an examination reinforces what has already been argued. That is, the evidence presented by the Insurance Department, even in the light supporting the decision, is not on point as it arguably talks about insurance rather than proves there is insurance.

The listing of exhibits at Record, pages 104-106, make clear what the Presiding Officer considered. The following analysis is offered with respect to each one of the exhibits. The analysis meets the requirement of making the argument in favor of the decision and then shows why each exhibit does not support the decision. The primary exhibits are in the addendum.

Complainant's Exhibit 1 is a copy of the original Cease and Desist Order. Nothing about this Order suggests that it proves that PEO Privilege Care was actually an insurance plan. The obvious use by the Department is for background of Mr. Ide having previously been enjoined for an association with a prior insurance provider.

Complainant's Exhibit 2 is a one page letter to Mr. Ide explaining Privilege Care is a new company coming to market. There is virtually no discussion of health insurance per se in that letter and it appears to support the decision only if one were to accept it suggests Privilege Care is a substitute for Employers Mutual, which was an unauthorized insurance plan. That conclusion takes a logical leap, however, that even if it is a substitute that

Privilege Care is health insurance as opposed to a legitimate PEO.

Exhibit 3 consists of 16 pages of various documents regarding Privilege Care. Note that the Presiding Officer states at footnote 3 of his decision at Record, page 122, that this exhibit “. . . is the only real printed literature about the company advanced . . .”. The exhibit itself is at Record, page 136-150. The exhibit is arguably supportive of the decision in that it contains a contract, application, and underwriting standards for a client to enroll and receive health benefits. The forms have a similarity in structure to what a consumer might expect to see in connection with health insurance.

Why Exhibit 3 doesn't work as evidence is that the word insurance is not used anywhere and the documents provide no information whatsoever on how the PEO operates internally so as to indicate it allocates risk within the meaning of insurance. That it shares characteristics of insurance-related documents is the overlapping concept described in the horse/sheep analogy given earlier in this brief. Even if the documents said it was a health insurance plan, there is no violation of law unless Privilege Care *is* an insurance plan any more than a paper saying a horse is a sheep makes a horse a sheep.

Complainant's Exhibit 4 from Record, pages 151-152, are two letters from Gerald Ide. Ide refers to the Privilege Care Plan as a “health plan” and refers to the fact that he thought he could get health coverage claims paid under this new plan that were lost on the earlier Employers Mutual Plan. Why this exhibit doesn't work is that the letters have absolutely no

discussion about the operation of the Privilege Care Plan and whether it allocates risk within the meaning of insurance.

Complainant's Exhibit 5 from Record, page 153, is a copy of an enrollment application from a client. This arguably supports an inference that Ms. Wilbert thought she was signing up for insurance and the form does ask for "previous health insurance". Ide does use the word "premium" here in a handwritten note constituting a receipt. The exhibit does not support the decision in that the printed text does not describe itself as an insurance program and offers no insight as to the actual economic operation of Privilege Care.

Complainant's Exhibit 6 at Record, page 155-156, is another application with an attached contract. Nothing on this exhibit would distinguish it from the point supporting or opposing its evidentiary effect from Exhibit 5.

Complainant's Exhibit 7 is a copy of a letter from an insurance agent that testified for the Insurance Department concerning Mr. Ide. The exhibit is found at Record, page 156. This exhibit appears to be primarily background information. The letter suggests that Ide was marketing a program similar to a prior health plan. The letter is not helpful in that it sheds no light on the economic operation of Privilege Care.

Complainant's Exhibits 8, 9, and 10 commencing at Record, page 158, are not reproduced in the addendum because they consist of 49 pages of general government publications concerning general discussions of ERISA benefit programs that appear to be

general background information for the Presiding Officer as opposed to direct evidence about any aspect of Privilege Care or the activity of Mr. Ide.

Ide's Exhibits 1-4, at Record, page 224-227 obviously do not support the insurance theory of the Insurance Department and are not part of the marshaling requirement. Similarly, the remainder of Ide's exhibits, which consist of multiple pages of recommendation in support of his continuing work as an insurance agent are also outside the marshaling requirement as evidence of the responding party.

Reinforcing what has been stated above, none of these exhibits help the decision maker get to the ultimate question of whether Privilege Care actually is an insurance program. The Insurance Department has ignored throughout this licensing action that PEOs are perfectly legitimate business organizations rendering health benefits, and are recognized under Utah law as described in the primary brief. (Brief of Petitioner at 6-7). Where the attributes of those two programs overlap, it becomes all the more important that the Insurance Department have presented sufficient evidence as to the actual economic operation of Privilege Care. That would be done by an economic analysis presented as evidence at the trial. That is, there should have been evidence that when a dollar comes in from an enrolled member it is truly a premium within the context of insurance and what happens to the dollars that come in, in relation to the benefits that are paid. Ide met his obligation by denying insurance was being sold and by presenting the testimony of Michael Garnett, who explained

the operation of Privilege Care as a legitimate PEO. (R. at 91-114).

In summary, returning to the analogy, Ide was marketing horses that had attributes that overlapped with sheep. Nobody from the Insurance Department ever actually looked at the animal to see that it was a sheep but were more than happy to offer opinions based on overlapping characteristics. To prevail, somebody from the Insurance Department should have looked at the sheep and then came in and said “I saw it.” The Insurance Department did not do its duty, did not meet its burden of proof, did not present substantial evidence, and did not make a case against Mr. Ide.

CONCLUSION

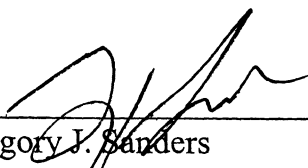
The primary fundamental legal burden of the Insurance Department in seeking to revoke the livelihood of Gerald Ide was to show Ide was selling an unauthorized insurance product. The Department never made an analysis of the economic operation of the Privilege Care program sold by Ide so that some witness could say an insurance program was marketed. The marshaling argument made by the Insurance Department in this appeal has no legal force because it avoids the fundamental problem that the Department never analyzed the economic operation of the program to determine that it was in fact an insurance program. Ide could have written in bold letters on a piece of paper “I am selling you health insurance” and if Privilege Care was not an insurance program, such evidence would have meant absolutely nothing in an insurance license revocation proceeding. He either was selling

insurance, or he was not, and the discussion about the opinions of investigators who read sales literature, the understanding of consumers, and the language of the sales literature still don't prove the fundamental proposition that an insurance program existed.

To compound the gross error of analysis that has deprived an insurance agent with decades of experience of his livelihood for many months now, the Presiding Officer shifted the burden of proof to Ide to prove that Privilege Care was not insurance. A gross injustice has been done here and this Court should order the immediate reinstatement of Mr. Ide's insurance license for the failure of the Insurance Department to not only present substantial evidence to support the decision, but fail to present any evidence at all that the health benefit plan of Privilege Care was, in fact, insurance.

DATED this 15th day of July, 2003.

KIPP AND CHRISTIAN, P.C.


_____
Gregory J. Sanders
Margaret R. Wakeham
Attorneys for Petitioner

ADDENDUM

State's Exhibit 1	A-1
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Order on Hearing
State's Exhibit 1

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENTS:

EMPLOYERS MUTUAL, LLC, Unlicensed

711 S. Carson Street, #4

Carson City, NV 89701

& 31500 Grape Street

Lake Elsinore, CA 92532

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KARI HANSON, Unlicensed

711 S. Carson Street, #4

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Turnersville, NJ 08012

& 9830 S. 51st St, Suite A-131

Phoenix, AZ 85044

JIM DOYLE, Unlicensed

141 Ganttown Road, Suite E

Turnersville, NJ 08012

CEASE AND DESIST ORDER

Docket No. 2001-242-HL



MIKE DiVEEE, Unlicensed	:
141 Ganttown Road, Suite E	:
Turnersville, NJ 08012	:
CHRIS ASHIOTES, Unlicensed	:
141 Ganttown Road, Suite E	:
Turnersville, NJ 08012	:
FOUR STAR MARKETING GROUP, Unlicensed	:
1113 Edgefield Drive	:
Plano, TX 75075	:
& 14200 Midway, Suite 135	:
Dallas, TX 75244	:
FIVE STAR MARKETING, Unlicensed	:
1113 Edgefield Drive	:
Plano, TX 75075	:
DON R. SMITH, Unlicensed	:
1113 Edgefield Drive	:
Plano, TX 75075	:
JIM TESTA, Unlicensed	:
14200 Midway, Suite 135	:
Dallas, TX 75244	:
RHONDA PORTER, Unlicensed	:
1113 Edgefield Drive	:
Plano, TX 75075	:
DARENE MITCHELL, Unlicensed	:
1113 Edgefield Drive	:
Plano, TX 75075	:
JERRY IDE, License No. 51030	:
111 E. 5600 S., Suite 208	:
Murray, UT 84107	:
GREG DAVIES, License No. 100072	:
P.O. Box 95210	:
South Jordan, UT 84095	:
LOWELL E. LYON, License No. 104748	:
9077 Green Hills Dr.	:
Sandy, UT 84093	:
LARRY K. OLSEN, License No. 38458	:
475 S. 400 W., No. C4	:
Provo, UT 84601	:
CAL CRAGUN, License No. 21701	:
2686 E. Towne Dr.	:
Salt Lake City, UT 84121	:
STEVE TIBBS, License No. 21581	:
701 W. Kensington St.	:
Farmington, UT 84025	:

DONAL SMITH, License No. 104499	:
822 E. Pecos Dr.	:
Sandy, UT 84094	:
JOHN A. MOYES, License No. 139526	:
1678 E. 7200 S.	:
Salt Lake City, UT 84121	:
JASON PRIBIL, License No. 137519	:
2288 W. Canterwood Dr.	:
South Jordan, UT 84095	:
PEGGY LLEWELLYN, License No. 108279	:
2005 W. 14200 S.	:
Bluffdale, UT 84065	:

COMES NOW, Merwin U. Stewart, Insurance Commissioner of the State of Utah, and in support of the following states:

JURISDICTION

That Merwin U. Stewart is the Insurance Commissioner of the State of Utah and is charged with the duty of administering and enforcing all provisions of the Utah Insurance Code, pursuant to Utah Code Annotated, (U.C.A.) §§ 31A-2-201 and 31A-1-105(2).

Based upon information in the files of the Insurance Department the Commissioner enters the following:

FINDINGS OF FACT

1. Respondent Employers Mutual, LLC, is an entity with addresses in the States of Nevada and Arizona, and is not licensed or authorized to do the business of insurance in the State of Utah, nor any other state or territory of the United States.

2. Respondents James Graff, Richard J. Wiest, William R. Kokott, Nicholas E. Angelos, Ralph Angello, Kari Hanson, and Steve Summers, are officers and/or employees of Respondent Employers Mutual, LLC, none of whom are licensed or authorized to do the business of insurance in the State of Utah.

3. Respondent, American Benefit Society, is an entity with addresses in the States of New Jersey and Arizona, and is not licensed or authorized to do the business of insurance in the State of Utah, nor any other state or territory of the United States.

4. Respondents Jim Doyle, Mike DiVee, and Chris Ashiotes, are officers and/or employees of Respondent American Benefit Society, none of whom are licensed or authorized to do the business of insurance in the State of Utah.

5. Respondents, Four Star Marketing Group and Five Star Marketing, are entities with addresses in the State of Texas, and are not licensed or authorized to do the business of insurance in the State of Utah.

6. Respondents Don R. Smith, Jim Testa, Rhonda Porter, and Darene Mitchell, are officers and/or employees of Four Star Marketing Group and/or Five Star Marketing, none of whom are licensed or authorized to do the business of insurance in the State of Utah.

7. Respondents Jerry Ide, Greg Davies, Lowell E. Lyon, Larry Olsen, Cal Cragun, Steve Tibbs, Donal Smith, John A. Moyes, Jason Pribil, and Peggy Llewellyn, are licensed insurance agents in the State of Utah.

8. Since at least from June, 2001, Respondent Employers Mutual, LLC, has been soliciting and selling health insurance in the State of Utah, through its officers and employees as listed in paragraph 2 hereinabove, through Respondents Four Star Marketing Group and Five

Star Marketing and their officers and employees as listed in paragraph 6 hereinabove, and through agents licensed in the State of Utah as listed in paragraph 7 hereinabove.

9. Respondent Employers Mutual, LLC, maintains that it is operating exempt from state regulation pursuant to the provisions of the federal ERISA law. However, Respondent Employers Mutual, LLC, has not provided evidence to the commissioner showing that the laws of Utah are preempted under § 514 of ERISA as required in U.C.A. § 31A-4-106(3)(c).

10. During the same period of time, Respondent American Benefit Society, by and through its officers and employees as listed in paragraph 4 hereinabove, has been operating as a third party administrator for Respondent Employers Mutual, LLC, in the State of Utah, without being licensed to act as such.

11. Respondent Employers Mutual, LLC has been ordered by the states of Nevada, Colorado, and Florida to Cease and Desist doing an insurance business in violation of the laws of those states, and Respondent American Benefit Society has been ordered by the State of Oklahoma to Cease and Desist doing an insurance business in violation of the law of that state.

Based upon the above Findings of Fact the Commissioner enters the following:

CONCLUSIONS OF LAW

1. In soliciting and selling health insurance to residents of the State of Utah when not authorized to do an insurance business in this state, Respondent Employers Mutual, LLC, has violated U.C.A. §§ 31A-1-104 and 31A-4-106.

2. In assisting the soliciting and placement of health insurance in the State of Utah by an unauthorized insurer, Respondents violated U.C.A. §§ 31A-15-102 and 31A-23-405(2).

3. In assisting Employers Mutual, LLC, to act as an unauthorized insurer in the State of Utah, the Respondents licensed as agents in the State of Utah violated U.C.A. § 31A-23-405(1).

Based upon the Findings of Fact and Conclusions of Law, the Commissioner now enters the following:

ORDER

IT IS HEREBY ORDERED:

1. Respondents, other than those Respondents licensed as agents in the State of Utah, shall immediately Cease and Desist doing any insurance business in the State of Utah, including soliciting, marketing, or proposing to make any insurance contract, taking receiving or forwarding any application for insurance, collecting or receiving, in full or in part, any insurance premium, issuing or delivering any insurance policy or other evidence of an insurance contract, publishing or disseminating any advertisement or information for insurance, or representing or assisting any person to do an unauthorized insurance business or to procure insurance from an unauthorized insurer. This does not prohibit the payment of claims in the State of Utah.

2. Respondents who are licensed as agents in the State of Utah shall immediately Cease and Desist any assistance to any person doing an unauthorized insurance business in the State of Utah, including soliciting, marketing, or proposing to make an insurance contract, taking receiving or forwarding an application for insurance, collecting or receiving, in full or in part, any insurance premium, issuing or delivering an insurance policy or other evidence of an insurance contract, publishing or disseminating any advertisement or information for insurance, for any unauthorized insurer.

NOTIFICATION

Respondents are hereby notified that failure to abide by the terms of this Order may subject them to further penalties, including additional forfeitures of up to \$5,000.00 per violation (up to \$2,500.00 per violation for individual licensees, and the suspension or revocation of their licenses), and the filing of an action to enforce this Order in the District Court which may impose penalties of up to \$10,000.00 per day for continued violation.

Respondents are further notified that, pursuant to U.C.A. § 31A-15-105, they are liable to any insured under contracts issued by an unauthorized insurer for the full amount of a claim or loss payable under the contract if not paid by the insurer.

DATED this 6th day of December, 2001.

MERWIN U. STEWART
INSURANCE COMMISSIONER


MARK E. KLEINFELD, JD
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114
Telephone (801)538-3800

Order on Hearing
State's Exhibit 2

Five Marketing

1113 Edgefield Drive
Piano, Texas 75075
(972) 881-0620
Fax: (972) 881-0632
drsmith@attbi.com

January 7, 2002

Consultants & Managers

Re: Let's Roll

With all of the ups and downs over the past few months we now have some important news to share with you in regards to what we are doing with our existing clients as well as what we can immediately sell and where.

The old Employers Mutual plan was taken over by the Department of Labor headed up by their trustee Thomas Dillon @ 650 558-8384 or fax @ 650 558-8387. The number for providers to call is 818 550-3040. He will be in court the 8th of January and will make a decision regarding writing new business or not. He will allow drafting this week for your existing block of business and we will be communicating how this will be handled. Those consultants in Texas will also be receiving consultant fees from October business when he gives the Green Light. When the other months are drafted our fees will again be paid accordingly.

New Companies to Market

VICare/National Health Trust Fully Reinsured from 1st dollar through Lincoln National, an A.M. Best "A" rated company. Beechstreet is the PPO

Offering incredible Underwriting along with rich Benefits and level compensation.

Marketing in the following 18 states:

Arkansas, California, Delaware, Illinois, Kentucky, Mississippi, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, Tennessee, Virginia, Washington, Washington, D.C., and Wyoming

We should have additional states approved throughout the year.

Privilege Care "POE" Professional Employer Organization Insured through ULICO, an A.M. Best "A" rated company. CCN is the PPO

The differences between In-Network and Out of Network benefits are unique and different

Offering incredible Underwriting along with rich benefits and level compensation

Marketing in all states other than Pennsylvania

There must be a clear understanding regarding both products prior to you offering these to your clients. We are just as eager to get started as you however we are going to do it right. All materials necessary to get started are being entered on our Web Site. The Web Site address is www.alternativebenefitsolutions.com. You will have access to all materials early this year.

Groups can be written with both plans and the rates ~~sizzle~~!



Order on Hearing
State's Exhibit 3



Quick Physician/Facility Search

Doc/Facility Name

City

I have read and agree to this [disclaimer](#) No ☒ Yes ☐
[Home](#) | [New to Site](#) | [Patient/Policyholder](#) | [Provider](#) | [Payer](#) | [Agent/Broker](#) | [Online Directory](#)

Quick Navigation

[New to Site](#)[Patient/Policyholder](#)[Provider](#)[Payer](#)[Agent/Broker](#)[New Agent/Broker](#)[New Patient/Policy Holder](#)[New Payer](#)[New Provider](#)

HealthSmart Preferred Care is a nation-wide PPO network.

Welcome

Welcome to HealthSmart.net, the home page of HealthSmart Preferred Care, Inc. [more..](#)

Company Information

Find out more about HealthSmart Preferred Care, Inc. [more..](#)

Online Directory

Use the search options here to find a physician or facility in your area. You can also download complete directories by state. [more..](#)

Resources

Links to aid you in your search for Health Care related topics. [more..](#)

[Help](#) | [Feedback](#)


ACCREDITED

Health Network and LHM Standards



United We Stand

Contact Us

Please contact us with any questions, comments or requests.

[Contact Us](#)

528-3

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CARLOS - 818 - 530 - 3040

America is longer



PRIVILEGE CARE INC. PEO

CONTRACTUAL AGREEMENT

Relationship, this Client Agreement is made between Privilege Care Inc. PEO (P/C) and the Client.

P/C will provide personnel services and other related services as made agreed upon by the Client and P/C. For the purposes of a Contractual Agreement, Client is special (borrowing) employer and P/C is the general (leasing) employer.

Client agrees to engage P/C employees to fill job functions.

It is understood and agreed that P/C is an independent contractor and all individuals assigned to Client to fulfill job functions are employees of P/C. P/C is responsible for withholding applicable federal, state, local taxes and assessments with respect to such employees, P/C agrees to hold Client harmless.

Client will furnish all monies due for said state, federal, local taxes. Failure by Client to furnish said taxes will then revert the responsibility of prior paragraph back to Client.

All payroll is COD.

Notification of employees must be received by P/C within 24 hours of date of hire.

Client as the special (borrowing) employer shall control direct duties assigned for the work and performance of P/C employees.

Client shall keep in force general liability insurance covering the Client's premises and operation.

For employee benefits and/or workers compensation and other liability reasons P/C may be indicated as the sole employer or co-employer.

Should any term warrant or provision of this agreement be held as invalid, the balance of this agreement shall remain enforce.

PRIVILEGE CARE, INC. PEO

CLIENT

11/10

1/3/7

PRIVILEGE CARD

YOUR SERVICE CENTER
1000 WEST WILSHIRE, SUITE 315
OKLAHOMA CITY, OK 73116
TOLL FREE 1-866-263-0461

Enrollment Department

1. TO BE FILLED OUT BY BROKER

Plan _____

Broker Name: _____

Enrollment Department/Change Form

Application ☐ New Hire ☐ Life Event Change *Complete all information and sign form.*

For Member Enrollment or Change - Employee Must Complete In Full

For Plan Change provide your Identification Number Below and indicate the change(s) you are making.

Delete appropriate section(s) and sign form.

I.D.# _____

Change ☐ Address ☐ Last Name ☐ Rehire ☐ Dental Office

Dependent Membership Change ☐ Add Dependent: *If adding spouse, indicate marriage date.* / / ☐ Delete Dependent

For Information (complete this section in its entirety, whether you are a new applicant or are making a change to an existing contract)

Security Number _____

Name _____ First Name _____ Middle Initial _____

M ☐ F _____ Date of birth (month/day/year) / /

Address _____

State _____ Zip Code _____

Phone Number _____ Home: ( ) - _____ Work: ( ) - _____

Marital Status ☐ Single ☐ Separated ☐ Married ☐ Divorced ☐ Widowed

Had Health Insurance within the last 62 Days _____

Primary Dental Office Name _____ Primary Dental Office Number _____

Employer Information / For internal use only _____

Employee Number _____ Division _____

Date of Hire / / _____ Date Coverage/Change is Effective / /

Authorized Signature _____ Date _____

Additional Information

	Last Name	First Name	Middle Initial	Sex	Date of birth	Social Security Number	Full-time Student over 19? (If yes please attach verification of dependent full-time student status)	Handicapped? If yes, please attach verification
				☐ M ☐ F	/ /			
Child				☐ M ☐ F	/ /			
				☐ M ☐ F	/ /			
				☐ M ☐ F	/ /			

If I have listed any dependents in the Dependent Information Section, you must answer the questions below.

Do any of the dependents listed in this section live at another address? ☐ Yes ☐ No

If yes, who and at what address? Explain the circumstances:

If any dependent's last name is different from yours, explain the circumstances:

For Insurance Information To be sure that you receive all the benefits to which you are entitled, you must complete the following:

Are you or any of your dependents currently eligible to receive Medicare benefits? ☐ Yes ☐ No

Do any of the individuals on this enrollment form have pre-existing conditions? ☐ Yes ☐ No

Are you or any of your dependents currently pregnant or disabled? ☐ Yes ☐ No

Do you have other coverage in addition to ours? ☐ Yes ☐ No

ANSWERING "YES" DOES NOT AUTOMATICALLY DISQUALIFY YOU) If yes to 5A, 5B, or 5C, please complete the following questions.

Please indicate name of Medicare recipient and relationship to member (i.e. self, spouse, dependent):

Please indicate name, relationship to member, and description of pre-existing condition:

Name	Relationship to Member	Description of pre-existing condition

Please indicate name of individual and check appropriate box:

Name	Pregnant	Disabled

Please complete all information below

Are any individual on the enrollment form currently on medication? ☐ Yes ☐ No

If yes, please indicate name of individual, relationship to member, and medication(s)

Name	Relationship to Member	Medication(s)

Have you or any individual on the enrollment form been hospitalized in the past 12 months? ☐ Yes ☐ No

If yes, please complete the following:

Name	Relationship to Member	Reason for Hospitalization

To the best of my knowledge, the statements above are true and correct. I understand that all services and products above an office visit require precertification.

New Employee Signature:

Date:

MEDICAL QUESTIONNAIRE

NAME: _____ SOCIAL SECURITY #: _____
ADDRESS: _____
PHONE #: ( ) _____ WORK: ( ) _____
D.O.B. _____ STATUS: _____

GIVE DETAILS FOR EACH "YES" ANSWER. PLEASE BE AWARE THAT THIS QUESTIONNAIRE APPLIES TO YOU, YOUR SPOUSE AND DEPENDENTS.

1. A. HEIGHT _____ FT. _____ IN. _____
B. WEIGHT _____ LBS. _____
C. ANY WEIGHT GAIN IN THE PAST YEAR? _____ LBS. OR LOSS _____ LBS. _____ YES No
2. HAVE YOU EVER:
A. RECEIVED TREATMENT, ADVISE, OR COUNSELING FROM A PHYSICIAN, OTHER, OR AN ORGANIZATION FOR ALCOHOL OR DRUG USE? _____ YES No
3. HAVE YOU EVER BEEN TREATED FOR OR DIAGNOSED AS HAVING:
A. CANCER ? _____ YES No
B. HIGH BLOOD PRESSURE, STROKE , OR DISEASE OR DISORDER OF THE HEART, BLOOD, OR CIRCULATORY SYSTEM? _____ YES No
C. ANY MENTAL OR NERVOUS DISORDER, EPILEPSY, ANY MUSCULAR OR SKELETAL DISORDER, OR ANY PARALYSIS OR DEFORMITY? _____ YES No
D. DISEASE OR DISORDER OF KIDNEYS, LUNGS, STOMACH, LIVER, DIGESTIVE SYSTEM, OR URINARY SYSTEM? _____ YES No
E. ANY MENTAL OR NERVOUS COUNSELING? _____ YES No
F. DIABETES – REQUIRE INSULIN? _____ YES No
G. IS ANYONE PRESENTLY PREGNANT? _____ YES No
PLEASE LIST ANY OTHER PRE-EXISTING CONDITIONS NOT STATED.
_____
_____
4. ARE YOU NOW RECEIVING TREATMENT OR MEDICATIONS? EXPLAIN _____ YES No

5. BEEN ADVISED TO HAVE ANY DIAGNOSTIC TEST INCLUDING
MRI, CT SCAN, X-RAY, HOSPITALIZATION, OR SURGERY? YES NO
6. HAVE YOU EVER EXPERIENCED ANY MUSCULOSKELETAL DISORDERS, INCLUDING
BUT NOT LIMITED TO, BACK PAIN, NECK PAIN, OR JOINT STIFFNESS? YES NO
7. DO YOU HAVE HIV/AIDS, ARC, OR ANY OTHER AUTOIMMUNE DISEASE? YES NO
8. ANY BIRTH DEFECTS? YES NO

UNDER PENALTY OF LAW, I HEREBY SWEAR AND ATTEST TO THE STATEMENTS ABOVE.

PRIMARY SIGNATURE _____ **DATE** _____

SPOUSE SIGNATURE _____ **DATE** _____

PLEASE EXPLAIN ALL "YES" ANSWERS:

[illegible]

AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS (BANK DRAFT)

I hereby authorize _____ or its designated consultants (herein after referred as COMPANY) to electronically withdraw any amounts owed by initiating debit entries to the below designated account at the Financial Institution (herein after referred as BANK) indicated below. Further, I authorize the BANK to accept and to charge any debit entries initiated by the COMPANY to my account in the total amount of _____ per month / per draft(s). In the event the COMPANY withdraws funds erroneously from my account, I authorize the COMPANY to credit my account for the amount not to exceed the original amount of the debit.

Bank Name _____

Address _____

City _____ State _____ Zip _____

Bank Transit # _____

Account # _____

Requested Draft Date _____ 10th _____ 20th

This authorization is to remain in full force and effect until COMPANY and / or BANK has received written notice from me of its termination in such time and in such manner as to afford COMPANY and/or BANK a reasonable opportunity to act on written request.

Authorized Name (Please Print) _____ Member's Identification Number _____

Authorized Signature _____ Date _____

AN ORIGINAL VOIDED CHECK MUST ACCOMPANY THIS SIGNED AUTHORIZATION

_____
(OFFICE USE ONLY)

BATCH NUMBER _____

DATE ENTERED _____

PHONE VERIFICATION DATE _____

INITIALS _____

Five★Star Marketing

1113 Edgefield Drive
Plano, Texas 75075
972 881-0620 972 881-0632 Fax

Group Cover Sheet

Date Received: _____ Deadline Date: _____

Name of Group: _____

Address:

_____	_____	_____	_____
Street	City	State	Zip

Documents Attached:

_____ 3 Year Loss History (when possible)

_____ Most recent billing

_____ Census including monthly premiums and family status

What is the client's wish list?

_____
_____
_____

Consultant Name: _____ Code # _____

What do you (the Consultant) want to accomplish?

_____
_____
_____

Consultant Fee Desired _____

Note: For a composite rate, groups must be 20 or more.

Contact Info

The Union Labor Life Insurance Company
111 Massachusetts Avenue, NW
Washington, DC 20001

Group Life & Health - 202-682-6950
E-mail - memm@ullico.com

Individual Life & Health - 1-800-218-1044
E-mail - pbussie@ullico.com

Investment Services - 202-962-8459

* The Union Labor Life Insurance Company is licensed to do business in Massachusetts.

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© 2001 ULLICO Inc
111 Massachusetts Avenue NW
Washington, DC 20001

ULLICO Inc.



*Union Labor Life has over
of life insurance in force.*

Corporate Profile

{ Union Labor Life } UNIONCARE Ullico Life Trust Fund Advisors Ullico Ins. Grp Zenith Administrators

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{ ULLICO Inc's
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The Union Labor Life Insurance Company

Group benefits and pension services tailored for multiemployer trusts

Founded in 1925 to provide affordable life insurance for working Americans, The Union Labor Life Insurance Company has expanded to provide a wide range of insurance, risk management, and investment products for trust funds that manage the health and pension benefits of union workers. The company also provides additional life and health insurance products directly to union members and their families in cooperation with international and local unions.

With a long record of experience and an exclusive focus on multiemployer trusts and labor-oriented organizations, we have a thorough understanding of the special needs of jointly managed benefit and pension funds. Union Labor Life is America's largest insurance company specializing in the needs of union members, with \$2.5 billion in assets. The company is licensed in all 50 states and the District of Columbia.*

In addition to life and health indemnity insurance, we offer alternative funding arrangements, such as stop loss coverage and minimum premium contracts. Our UlliCare® Insurance and Care Management Services include provider networks, utilization management and prescription drug management.

We also offer administrative services, including claims processing and claims management, data management and analysis, and additional services for self-funded plans, including underwriting, booklet preparation, claims auditing and provider claims review.

Union Labor Life also offers several investment products to pension funds. These separate accounts invest on a commingled basis in equities, fixed income and alternative investments. Our mortgage account, J For Jobs, invests in commercial real estate projects built by union contractors and workers. J For Jobs has been successful in achieving its two primary objectives: producing a competitive return with low risk to capital and creating union jobs.

Union Labor Life is part of the ULLICO Group of Companies. ULLICO Inc. and its subsidiaries,

Groups can be written with both plans and the rates sizzle!

All materials and any correspondence will come through your immediate manager and then our National Sales office in Plano, Texas. Don't even think about designing any marketing materials until they are reviewed by our office and our legal staff for prior approval. This includes but is not limited to Fax Blasts, Ads of any type, recruiting materials, newspaper and/or any written or oral communications.

The Health Care industry is in turmoil and in many states a crisis situation exists. We are fortunate to have these fine plans to offer our prospects. Extensive training is forthcoming and the ability to change your families' lifestyle is in your hands. You will always know where you stand as communications will be constant and current. Your compensation will be level year after year. If you are interested in advances, charge backs and interest you will not find that here. If you are looking for long-term growth with support and level compensation you have found a home.

There will be extensive communication before this week is over.

Make all checks payable to: Privilege Care Marketing Group, Inc.

Respectfully,

Don R. Smith
National Sales Manager

A-27

Five Star Marketing Individual Underwriting "Guide"

- No Smoker Rate-up
- Height and Weight (Not Excessive) - Standard
- A.D.D. (Attention Deficit Disorder) - Standard
- Acid Peptic Disease Under Control - Standard
- Allergies - Standard
- Asthma (Not Chronic) - Standard
- Basal Cell Skin Cancer, Mild (Non Problematic) - Standard
- By Pass Surgery (3 Years up to Age 45) (5 Years 46 and older) No Problems - Standard
- Cancer (Internal), after 4 years with no treatment or problems - Standard
- Depression (Non Chronic) Single Medication - Standard
- Deviated Nasal Septum (No Surgery) - Standard
- Diabetes on Medication or Insulin Under Control - Standard
- Diverticulitis (Under Control) - Standard
- Endometriosis (Non Problematic) - Standard
- Epilepsy (Petit Mal) No Seizures within 2 years - Standard
- Gall Bladder (Removed) - Standard
- Gastric Ulcers, Mild - Standard
- Gout (Controlled by medication) - Standard
- Heart Disorders after 2 years with no problems - Standard
- Heart Murmur - Standard
- Hepatitis, Mild - Standard
- Hernia - Standard
- Herpes - Standard
- High Blood Pressure (Under Control) - Standard
- Kidney Stones Passed - Standard
- Lump in Breast or Cyst (Benign or Removed by Surgery) - Standard
- Lupus Individual Consideration
- Manic Depression and Bi-Polar - Decline
- Mental and Nervous Disorders, Single medication - Standard
- Mitro Valve Prolapse (No Problems) - Standard
- Osteoporosis, Mild no deformity, no history of compression fractures - Standard
- Ovarian Cyst (Benign) - Standard
- Polyps (Benign) - Standard
- Prostatitis (No Problems) - Standard
- Rheumatoid Arthritis (Non Problematic) - Standard
- Spinal Curvature (No Problems) - Standard
- Spine & Back Disorders: Slipped Disk, Herniated Disk (No Surgery Required) - Standard
- Stroke, Mild Non Disabling (After 2 Years) - Standard
- Thyroid (Controlled by medication) No Problems - Standard
- Ulcers (Under Control) - Standard
- Urinary Tract Infection (Cured or Under Control) - Standard

A-28

Any Condition Requiring Surgery Is a Decline

Automatic Declines

- AIDS or HIV
- Alcoholism/Drug Abuse (Prior to 5 Year Recovery)
- Alzheimer's
- Asthma - Chronic
- Basal Cell Carcinoma
- By-Pass within 3 years under 45 years Age 46 and older within 5 years
- Cancer within 4 years
- Circulatory Problems - Severe
- Crohn's Disease
- Currently Pregnant
- Emphysema (Severe)
- Epilepsy - Grand Mal and Jacksonian
- Gastric Ulcer - Severe
- Heart Problems, (Within 2 Years)
- Hepatitis - Chronic
- Hepatitis C
- Hodgkin's Disease
- Leukemia
- Lung Disease - Severe
- Manic Depressive, Bi-Polar
- Mental and Nervous Disorders - Severe
- Multiple Sclerosis
- Muscular Dystrophy
- Rheumatoid Arthritis - Severe
- Sickle Cell Anemia
- Stroke within 2 years
- Syphilis - Multiple Attacks
- Transplants
- Ulcerative Colitis

**Group Underwriting Starts with 20 or more and has
 different Guidelines**

A-29

PRIVILEGE CARE

EMPLOYEE HEALTH & WELFARE FUND

BENEFITS	IN NETWORK	OUT OF NETWORK
	Lifetime Maximum Benefit 1,000,000	Lifetime Maximum Benefit \$1,000,000
	100% after co-pay	\$100 Deductible (3 x family plan pays 70% UCR, ded. & co-pay)
PRESCRIPTION CARD	\$10 / \$15 Mail Order \$18 / \$20 - 90 day	None
PHYSICIAN VISTIS <i>Office hours</i>	\$10 co-pay	\$25 co-pay
SPECIALTY CARE <i>Office Visits</i>	\$10 co-pay	\$25 co-pay
<i>Diagnostic Outpatient Testing</i>	\$10 co-pay	\$25 co-pay
<i>Outpatient Therapy</i>	\$10 co-pay	\$25 co-pay
OUTPATIENT SURGERY	Covered 100%	\$25 co-pay
HOSPITALIZATION <i>Room & Board (Semi-Private)</i>	\$10 co-pay	\$25 co-pay
<i>Surgery & Anesthesia</i>	\$10 co-pay	\$25 co-pay
<i>Medical & Surgical Specialist Care</i>	\$10 co-pay	\$25 co-pay
<i>Diagnostic Testing</i>	\$10 co-pay	\$25 co-pay
SKILLED NURSING FACILITY	\$10 co-pay	\$25 co-pay
EMERGENCY ROOM	\$50 co-pay	\$50 co-pay (no deductible)
HOME HEALTH CARE	\$10 co-pay	\$25 co-pay
MATERNITY <i>First OB Visit</i>	\$10 co-pay	\$25 co-pay
<i>Hospital</i>	\$10 co-pay	\$25 co-pay
MENTAL HEALTH <i>Inpatient</i>	\$10 co-pay; 10 visits max	None
<i>Outpatient</i>	\$25 co-pay; 10 visits max * * other limits apply	None
SUBSTANCE ABUSE <i>Detoxification</i>	\$10 co-pay; 7 days	\$25 co-pay, 7 days
<i>Inpatient Rehabilitation</i>	\$10 co-pay; 30 days	\$25 co-pay; 30 days
<i>Outpatient Rehabilitation</i>	\$10 / visit; 60 visits	\$25 / visit; 60 visits
PREVENTATIVE CARE <i>Routine Physical</i>	\$10 co-pay; \$200 max	\$25 co-pay; \$200 max
<i>Annual GYN Exam</i>	\$10 co-pay	\$25 co-pay
<i>Pediatric Immunization</i>	\$10 co-pay	\$25 co-pay
<i>Mammography</i>	\$10 co-pay	\$25 co-pay
<i>Annual Pap Smear</i>	\$10 co-pay	\$25 co-pay
DURABLE MEDICAL EQUIPMENT	Covered 100%	\$25 co-pay
DENTAL	Discount - unlimited	None
VISION	Discount - unlimited	None
CHIROPRACTIC	Discount - unlimited	None

PRIVILEGE CARE, INC.

Professional Employer Organization (PEO) Plan Rates

(Rates effective 01/01/02)

The following rates are not age or area banded.

SINGLE	SINGLE & 1	FAMILY
\$329	\$546	\$676*
		\$714

* Rate is an introductory offer, beginning April 1, 2002,
the actual rate must be quoted. No Exceptions!

These rates are for individuals and small groups.

Larger group quotes are available for a composite rate.

Order on Hearing
State's Exhibit 4

February 5, 2002

Brian Hansen
Utah State Insurance Department
Salt Lake City, Utah

RECEIVED

FEB 06 2002

UTAH STATE
INSURANCE DEPT.

Dear Brian:

I faxing to you a copy of the letter I faxed to Five Star Marketing and copies of payments I've made on behalf of the Kirk Miller family.

I allowed several applications to be sent to this new health plan on the promises that pending maternity and surgery claims would be approved and paid from the Employers Mutual saga. It was a case of no other options, and I was given a personal promise that they would be taken care of.

Thank you again for your advice and support. This has been a very expensive lesson.

Sincerely,



Gerald G. Ide
111 E. 5600 So. #208
Murray, Utah 84107

A-35



February 4, 2002

Five Star Marketing
1113 Edgefield Drive
Plano, Texas 75075

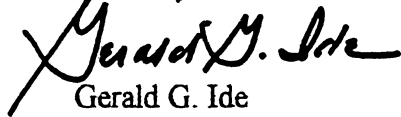
Re: Termination of contract

Dear Sirs:

Effective immediately I wish to terminate my contract with your organization.

I realize your intentions are good and basically noble, but until the State of Utah Insurance department sanctions the health care program your marketing company is representing I wish to remain unappointed with your company.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald G. Ide". The signature is written in a cursive, flowing style with a large initial "G".

Gerald G. Ide
111 E. 5600 So. #208
Murray, Utah 84107

cc: Brian Hansen
Utah State Insurance Department

A 36

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Order on Hearing State's Exhibit 5

PRIVILEGE CARE

YOUR SERVICE CENTER
1000 WEST WILSHIRE, SUITE 313
OKLAHOMA CITY, OK 73116
TOLL FREE 1-866-263-0461

PRIVILEGE CARE
EMPLOYEE HEALTH & WELFARE FUND

Enrollment Department

1. TO BE FILLED OUT BY BROKER

Plan

Broker Name

Enrollment Department/Change Form

New Application ☐ New Hire ☐ Life Event Change ☐ Complete all information and sign form.

Subscriber/Member Enrollment or Change - Employee Must Complete In Full

Information Change provide your identification Number Below and indicate the change(s) you are making.

Complete appropriate section(s) and sign form.

I.D.#

☐ Change

☐ Address

☐ Last Name

☐ Refuse

☐ Dental Office

☐ Dependent Membership Change

☐ Add Dependent: If adding spouse, indicate marriage date / /

☐ Delete Dependent

Subscriber Information (complete this section in its entirety, whether you are a new applicant or are making a change in an existing contract)

Social Security Number 454-49-9026

Last Name

WILBERT

First Name

KAREN

Middle Initial

K

Sex ☐ M ☒ F

Date of birth (month/day/year)

2/26/69

Street Address

516 E. 450 So.

City

SANMARTIN

State

UT

Zip Code

84655

Telephone Number

Home: (801) 754-5045

Work: ( ) -

Marital Status

☐ Single

☐ Separated

☒ Married

☐ Divorced

☐ Widowed

Previous Health Insurance within the last 62 Days

EBMS

Primary Dental Office Name

N/A

Primary Dental Office Number

Supervisor/Employer Information / For internal use only

Group Number

Division

Date of Hire / /

Date Coverage/Change is Effective / /

Authorized Signature

Date

Dependent Information

	Last Name	First Name	Middle Initial	Sex	Date of birth	Social Security Number	Full-time Student over 19? (If yes, please attach verification of dependence to income tax return status)	Handicapped? (If yes, please attach documentation)
Spouse				DM OF	/ /			
Adult Child				DM OF	/ /			
Child				DM OF	/ /			
Child				DM OF	/ /			



A29

Groups can be written with both plans and the rates sizzle!

All materials and any correspondence will come through your immediate manager and then our National Sales office in Plano, Texas. Don't even think about designing any marketing materials until they are reviewed by our office and our legal staff for prior approval. This includes but is not limited to Fax Blasts, Ads of any type, recruiting materials, newspaper and/or any written or oral communications.

The Health Care industry is in turmoil and in many states a crisis situation exists. We are fortunate to have these fine plans to offer our prospects. Extensive training is forthcoming and the ability to change your families' lifestyle is in your hands. You will always know where you stand as communications will be constant and current. Your compensation will be level year after year. If you are interested in advances, charge backs and interest you will not find that here. If you are looking for long-term growth with support and level compensation you have found a home.

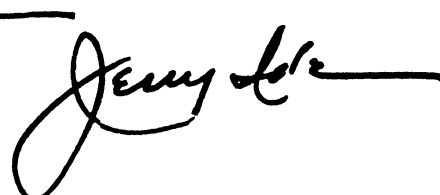
There will be extensive communication before this week is over.

Make all checks payable to: Privilege Care Marketing Group, Inc.

Respectfully,


Don R. Smith
National Sales Manager

1/10/02

RECEIVED FROM KAREN K.
WILBERT \$424.00 FOR
MONTH OF FEBRUARY 2002
PREMIUM


Order on Hearing State's Exhibit 6

PRIVILEGE CARE

YOUR SERVICE CENTER
1000 WEST WILSHIRE, SUITE 315
OKLAHOMA CITY, OK 73116
TOLL FREE 1-866-263-0461

PRIVILEGE CARE
EMPLOYEE HEALTH & WELFARE FUND

Enrollment Department

1. TO BE FILLED OUT BY BROKER

Plan

Broker Name:

Enrollment Department/Change Form

☒ New Application ☐ New Hire ☐ Life Event Change *Complete all information and sign form.*

Subscriber/Member Enrollment or Change - Employee Must Complete In Full

For Information Change provide your Identification Number Below and indicate the change(s) you are making.

Complete appropriate section(s) and sign form.

I.D.#

Change ☐ Address ☐ Last Name ☐ Rehire ☐ Dental Office

Dependent Membership Change ☐ Add Dependent: If adding spouse, indicate marriage date. / / ☐ Delete Dependent

Subscriber Information (complete this section in its entirety, whether you are a new applicant or are making a change to an existing contract)

Social Security Number

Last Name Miller First Name Kirk Middle Initial C

☒ Male ☐ Female Date of birth (month/day/year) 2/22/64

Current Address 1601 N. Pony Express Way

City Centerville State UT Zip Code 84014

Telephone Number Home: (801) 292 3248 Work: ( ) -

Marital Status ☐ Single ☐ Separated ☒ Married ☐ Divorced ☐ Widowed

Previous Health Insurance within the last 62 Days Employers Mutual

Primary Dental Office Name Primary Dental Office Number

Employer Information / For internal use only

Setup Number Division

Date of Hire / / Date Coverage/Change is Effective / /

Authorized Signature Date

Dependent Information

	Last Name	First Name	Middle Initial	Sex	Date of birth	Social Security Number	Full-time Student over 19? (If yes please attach verification of dependent full-time student status)	Handicapped? (If yes, please attach verification)
Disc		<u>Michelle</u>	<u>R</u>	OM ☒ F	<u>6/10/69</u>	<u>528-47-8856</u>		
1st Child		<u>Mackenzie</u>		OM ☐ F	<u>5/23/95</u>	<u>646-26-1756</u>		
1		<u>Emilie</u>		OM ☐ F	<u>8/21/97</u>	<u>647-34-5561</u>		
1		<u>Carson</u>	<u>R</u>	OM ☐ F	<u>10/11/99</u>	<u>647-48-9743</u>		

STATES
EXHIBIT

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PRIVILEGE CARE INC. PEO
CONTRACTUAL AGREEMENT

Relationship, this Client Agreement is made between Privilege Care Inc. PEO (P/C) and the Client.

P/C will provide personnel services and other related services as made agreed upon by the Client and P/C. For the purposes of a Contractual Agreement, Client is special (borrowing) employer and P/C is the general (leasing) employer.

Client agrees to engage P/C employees to fill job functions.

It is understood and agreed that P/C is an independent contractor and all individuals assigned to Client to fulfill job functions are employees of P/C. P/C is responsible for withholding applicable federal, state, local taxes and assessments with respect to such employees, P/C agrees to hold Client harmless.

Client will furnish all monies due for said state, federal, local taxes. Failure by Client to furnish said taxes will then revert the responsibility of prior paragraph back to Client.

All payroll is COD.

Notification of employees must be received by P/C within 24 hours of date of hire.

Client as the special (borrowing) employer shall control direct duties assigned for the work and performance of P/C employees.

Client shall keep in force general liability insurance covering the Client's premises and operation.

For employee benefits and/or workers compensation and other liability reasons P/C may be indicated as the sole employer or co-employer.

Should any term warrant or provision of this agreement be held as invalid, the balance of this agreement shall remain enforce.

PRIVILEGE CARE, INC. PEO

CLIENT

Order on Hearing State's Exhibit 7

Mr. Taylor,

Jerry Ide contacted me about this new program that replaced ERISA. He sent me material that looked nearly identical to the "ERISA" plan. He told me it was approved in the State and it was ready to go.

About a week later, a client called me and hadn't received his old "ERISA" policy that I wrote in 2001. I told him to call Jerry and he did because Jerry called me the very next day which was the last Tuesday in January. Jerry told me to come and pick up papers to take to this client so we could put him on the new plan. He said the client was ready to go and Jerry had the papers ready for me to take out and get this client to sign. I was told the commission schedule was \$50 for singles every month, \$75 for a two party and \$100 for a family.

Thanks,

Doug Milne

A47



Order on Hearing
Respondent's Exhibit 1

January 9, 2002

Consultants & Managers

Re: Let's Roll

With all of the ups and downs over the past few months we now have some important news to share with you in regards to what we are doing with our existing clients as well as what we can immediately sell and where.

The old Employers Mutual plan was taken over by the Department of Labor headed up by their trustee Thomas Dillon @ 650 558-8384 or fax @ 650 558-8387. The number for providers to call is 818 550-3040. He will be in court the 8th of January and will make a decision regarding writing new business or not. He will allow drafting this week for your existing block of business and we will be communicating how this will be handled. Those consultants in Texas will also be receiving consultant fees from October business when he gives the Green Light. When the other months are drafted our fees will again be paid accordingly.

New Companies to Market

ViCare/National Health Trust Fully Reinsured through Lincoln National, an A.M. Best "A" rated company. Beechstreet is the PPO. Offering liberal Underwriting along with rich Benefits and level compensation. Marketing in the following 19 states: Arkansas, California, Delaware, Illinois, Kentucky, Mississippi, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, Tennessee, Virginia, Washington, Washington, D.C., Wyoming & W. Virginia. We should have additional states approved throughout the year.

Privilege Care "PEO" Professional Employer Organization Re-Insured through ULLICO, an Best "A" rated company. CCN as well as Health Smart is the PPO. *Checks are to be made payable to: Privilege Care Marketing Group, Inc.* The differences between In-Network and Out of Network benefits are unique and different. Offering liberal Underwriting along with rich benefits and level compensation. Marketing in all states except Florida and Pennsylvania.

There must be a clear understanding regarding both products prior to you offering these to your clients. We are just as eager to get started as you however we are going to do it right. All materials necessary to get started are being entered on our Web Site. The Web Site address is www.alternativebenefitsolutions.com. The password will be "PCPEO". You will have access to all materials early this week.

Groups can be written with both plans and the rates sizzle!



A-51

Order on Hearing Respondent's Exhibit 2

March 25, 2002

To whom it may concern:

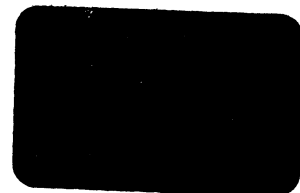
Re: Application to Privilege Care

Gerald G. Ide allowed an application for health care to be submitted to Privilege Care, a "PEO" Professional Employer Organization. This was done, even though a Cease & Desist order was issued to Five Star Marketing, American Benefit Society and other principals.

This plan of action was approved by us because the applicant was pregnant and had been a part of the Employer Mutual, LLC plan and claims were pending. We felt this was an approved recommendation to Mr. Ide because it had nothing to do with companies involved in the Cease & Desist order and was being sent directly to Privilege Care. When Mr. Ide, then found out that this plan was not in compliance with the Utah State Insurance Department he requested an immediate refund, which was sent.

He has not sent in , or allowed to be sent in, any other applications to us for issue through Privilege Care.

A-55



Order on Hearing
Respondent's Exhibit 3

Five Marketing

1113 Edgefield Drive

Plano, Texas 75075

(972) 881-0620

Fax: (972) 881-0632

1 866 256-7716

drsmith@attbi.com

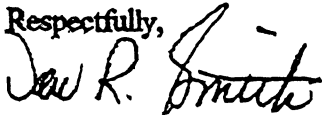
February 24, 2002

To: Whom it may concern

Re: Gerald G. Ide

Mr. Ide marketed products through my office until such time we received a Cease and Desist Order on December 5, 2001 from the State of Utah. Mr. Ide has not submitted any business through Five Star Marketing since that date.

Respectfully,



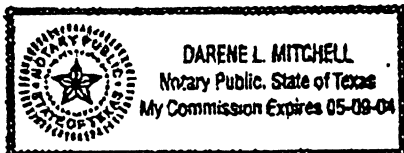
Don R. Smith

State of Texas

County of Collin

Before me on this day personally appeared Don R. Smith, known to me to be the person who signed the foregoing document, who on oath depose and say that the statements made in the document are true and correct.

Witnessed to and subscribed before me, this the 24th day of February, 2002.



Darene L. Mitchell
(Signature of Person Administering Oath)

05-09-04
My Commission Expires



Order on Hearing
Respondent's Exhibit 4

Privilege Care Marketing Group
PO Box 177
Moorestown, NJ 08057

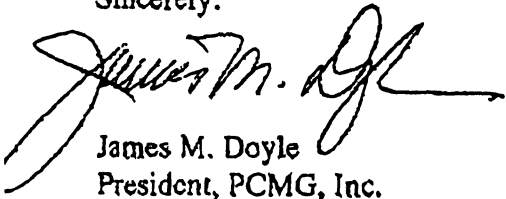
February 22, 2002

To whom it may concern;

Mr. Gerald Ide is contracted with our organization as an independent marketing consultant. This contract allows him to market the services of Privilege Care, a Professional Employers Organization. Mr. Ide had enrolled and contracted a few companies with the PEO through co-employer agreements in the month of February 2002. However, due to some compliance and regulatory issues, each case has been returned in addition to any monies collected.

Furthermore, we do look forward to doing business with Mr. Ide once all regulatory issues within his home state are satisfied. Should anyone wish additional information, or clarification of the contents of this letter, please do not hesitate to contact my office.

Sincerely:


James M. Doyle
President, PCMG, Inc.



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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2003, I caused two true and correct copies of the foregoing **REPLY BRIEF** was mailed, first class, postage pre-paid to the following:

M. Gale Lemmon
Enforcement Counsel
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114

