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INSURANCE DEPARTMENT
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ATTN: HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:
: :
AMERICA'S CHOICE HEALTH : Sections 611-A(20) and 696-A
PLANS, INC. : of 2002 (40 P.S. §§ 310.11 and
123 West Main Street : 310.96)
Dublin, PA 18917 : :
: Section 1007 of the Insurance
: Department Act, Act of May 17,
: 1921, P.L. 789, No. 285 (40 P.S.
: § 324.7)
: :
Respondent. : Docket No. CO04-05-014

CONSENT ORDER

AND NOW, this 23rd day of August, 2004, this Order is hereby issued by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania pursuant to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order, and the Findings of Fact and Conclusions of Law contained herein, shall have the full force and effect of an Order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra, or other applicable law. Respondent neither admits nor contests the findings herein.

FINDINGS OF FACT

3. The Deputy Insurance Commissioner finds true and correct each of the following Findings of Fact:

- (a) Respondent is America's Choice HealthPlans, Incorporated, and maintains its address at 123 West Main Street, Dublin, Pennsylvania 18917.
- (b) At all times relevant herein, Respondent has been a licensed insurance administrator.
- (c) During 2001 and 2002, Woodloch Pines, Incorporated, Hawley, Pennsylvania, procured health insurance policy #1022-PAWO(2) from Gerber Life Insurance Company, and contracted with Respondent to administer its insurance claims.

- (d) During 2003, Gerber Life Insurance Company conducted an audit of Respondent's administration of policy #1022-PA WO(2) that revealed errors in claims payments made to Woodloch Pines through Respondent.
- (e) Pertinent to the aforementioned audit, Respondent billed Gerber Life Insurance Company for \$365,963.14 in claims, of which \$244,388.36 were overpayments made to Woodloch Pines.
- (f) Woodloch Pines confirmed it received \$244,388.36 in overpayments from Gerber Life Insurance Company, which has not been refunded to date.
- (g) During 2003, Respondent entered into bankruptcy and ended its operations in the business of insurance.

CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Deputy Insurance Commissioner concludes and finds the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.

- (b) Section 611-A(20) of Act 147 of 2002 prohibits a licensee from demonstrating a lack of general fitness, competence or reliability sufficient to satisfy the department that the licensee is worthy of licensure (40 P.S. § 310.11).
- (c) Respondent's activities described above in paragraphs 3(c) through 3(f) violates Section 611-A(20) of Act 147 of 2002.
- (d) Section 696-A of Act 147 of 2002 requires every insurance producer to be responsible in a fiduciary capacity for all funds received or collected (40 P.S. § 310.96).
- (e) Respondent's activities described above in paragraphs 3(c) through 3(f) constitute a violation of acting in a responsible fiduciary capacity when handling funds received or collected and violates Section 696-A of Act 147 of 2002 (40 P.S. § 310.96).
- (f) Respondent's violations of Sections 611-A(20) and 696-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
 - (ii) imposition of a civil penalty not to exceed five thousand dollars

- (iii) (\$5,000.00) for each violation of the Act;
- (iii) an order to cease and desist; and
- (iv) any other conditions as the Commissioner deems appropriate.
- (g) Section 1007 of the Insurance Department Act, No. 285 (40 P.S. § 324.7) requires every administrator to maintain, at the principal administrative office for the duration of written agreements and five years thereafter, adequate books of all transactions and records of all transactions between it, the benefit plan and persons covered under the benefit plan.
- (h) Respondent's activities described above in paragraphs 3(c) through 3(f) constitutes failure to maintain adequate records of all transactions, in violation of Section 1007 of the Insurance Department Act (40 P.S. § 324.7).
- (i) Respondent's violations of Section 1007 of the Insurance Department Act are punishable by the following, under Section 1013 of the Insurance Department Act (40 P.S. § 324.13(b)):
- (i) suspension, revocation or refusal to issue the certificate of qualification or license;
- (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for each violation of the Act;

- (iii) order restitution upon finding that the administrator violated any of the requirements of this act or regulations, or the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation.

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Deputy Insurance Commissioner orders and Respondent consents to the following:

- (a) Respondent shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) All licenses/certificates of Respondent to do insurance business are hereby revoked.
- (c) If Respondent should ever become licensed in the future, its certificates and licenses may be immediately suspended by the Department following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any complaint against Respondent is accurate and a statute or regulation has been violated. The Department's right to act under (ii) above is limited to a period of five (5) years from the date of issuance of such certificates and licenses.

- (d) Respondent specifically waives its right to prior notice of said suspension, but will be entitled to a hearing upon written request received by the Department no later than thirty (30) days after the date the Department mailed to Respondent by certified mail, return receipt requested, notification of said suspension, which hearing shall be scheduled for a date within sixty (60) days of the Department's receipt of Respondent's written request.
- (e) At the hearing referred to in paragraph (d) of this Order, Respondent shall have the burden of demonstrating that it is worthy of an insurance certificate and license.
- (f) In the event Respondent's certificates and licenses are suspended pursuant to paragraph 5(c) above, and Respondent either fails to request a hearing within thirty (30) days or at the hearing fails to demonstrate that it is worthy of a certificate and license, Respondent's suspended certificates and licenses shall be revoked.

6. In the event the Deputy Insurance Commissioner finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein, the Department may pursue any and all legal remedies available, including but not limited to the following: The Department may enforce the provisions of this Order in an administrative action pursuant to the

Administrative Agency Law, supra, or other relevant provision of law; or, if applicable, the Department may enforce the provisions of this Order in any other court of law or equity having jurisdiction.

7. Alternatively, in the event the Deputy Commissioner finds that there has been a breach of any of the provisions of this Order, the Deputy Commissioner may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

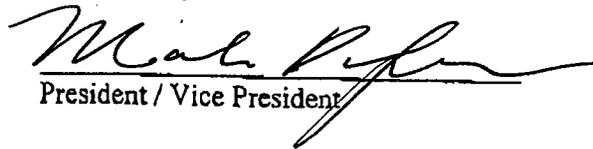
9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Deputy Insurance Commissioner. Only the Insurance Commissioner or the duly authorized Deputy

Insurance Commissioner is authorized to bind the Insurance Department with respect to the settlement of the alleged violation of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or the duly authorized Deputy Insurance Commissioner.

BY: AMERICA'S CHOICE HEALTHPLANS,
INC., Respondent


President / Vice President

Secretary / Treasurer


RANDOLPH L. ROHRBAUGH
Deputy Insurance Commissioner
Commonwealth of Pennsylvania