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UTAH STATE
INSURANCE DEPT.

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

COMPLAINANT:

UTAH INSURANCE DEPARTMENT

RESPONDENTS:

NATIONS HEALTH ALLIANCE
Utah Org. Id. No. 159525

DAVID F. WICKES
License No. 358583

TIMOTHY VEST
License No. 41808

ATHALON INSURANCE AGENCY, LC
License No. 91244

ATHALON GROUP, LC
License No. 347662 & 353787

ATHALON TPA GROUP, LLC
License No. 355904

**STIPULATION
&
ORDER**

Docket No. 2011-039-HL

Enf. Case No. 2780

STIPULATION

1. Respondents Timothy Vest, Athalon Insurance Agency, LC, and Athalon TPA Group, LLC, (collectively the Vest Respondents), hereby stipulate with the Utah Insurance

Department as follows:

2. Respondent Timothy Vest ("Vest") is an individual residing in the State of Utah and is licensed as an insurance consultant in the State of Utah, License No. 41808. Vest is the owner and managing member of Respondents Athalon Insurance Agency, LC, and Athalon TPA Group, LLC. Vest was previously licensed as a resident insurance agent, which license lapsed on June 30, 2011, when his application for renewal of that license was denied. Vest filed a timely request for a hearing on the denial of his license renewal application.

3. Complainant, Utah Insurance Department, filed a Complaint against the Vest Respondents and others in this matter on April 13, 2011. The hearing on Department's Complaint and the hearing on the denial of Vest's license renewal application were combined so these matters could be adjudicated in a single hearing.

4. Respondents admit the jurisdiction of the State of Utah Insurance Commissioner as to all matters herein.

5. Respondents neither admit nor deny the Findings of Fact and Conclusions made therefrom.

6. Respondents stipulate to the summary entry of the Order herein, which shall be in lieu of other administrative proceedings by Complainant in this matter.

7. Respondents and Complainant have negotiated the terms of the Order entered herein and Respondents agree to its entry and further agree to be bound by all its terms.

8. Respondents are aware of their right to a hearing at which they may be represented by counsel, present evidence and cross-examine witnesses. Respondents have irrevocably waived their right to such hearing and to any appeal related thereto.

9. Respondents are acting herein free from any duress or coercion of any kind or nature, having been advised fully as to their rights set forth herein.

10. Respondent Vest hereby withdraws his request for a hearing on the denial of his application for renewal of his resident individual insurance producer's license.


11. Respondents hereby surrender the insurance licenses of Respondent Athalon Insurance Agency, LC and Athalon TPA Group, LLC.

12. Respondent Vest hereby stipulates to the entry of an order revoking his individual resident insurance consultant's license.

DATED this 14th day of November, 2011.

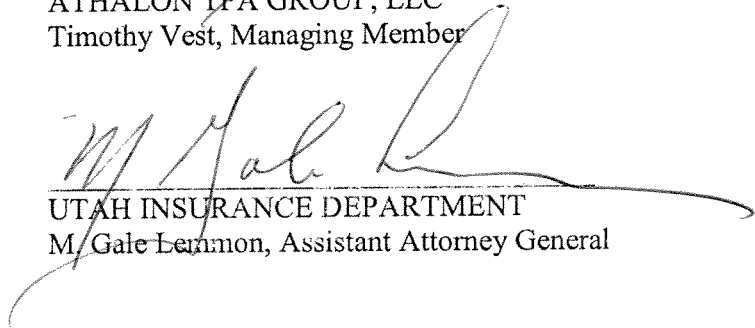

TIMOTHY VEST

Approved as to Form:


BRENT M. BURNINGHAM
Burningham Law, P.C.
Attorney for the Vest Respondents


ATHALON INSURANCE AGENCY, LC
Timothy Vest, Managing Member


ATHALON TPA GROUP, LLC
Timothy Vest, Managing Member


UTAH INSURANCE DEPARTMENT
M. Gale Lemmon, Assistant Attorney General

Based upon the foregoing Stipulation and information in the files of the Department, the Presiding Officer makes the following Findings of Fact:

FINDINGS OF FACT

1. On or about November 19, 2008, Respondent David F. Wickes (“Wickes”) with the assistance of Respondent Timothy Vest (“Vest”) obtained a license from the Utah Insurance Department for Respondent Nations Health Alliance (“NHA”) to act as a voluntary health insurance purchasing alliance.

2. In obtaining a license for Respondent NHA, Respondent Vest represented to employees of the Utah Insurance Department that NHA had complied with all the statutory requirements for the issuance of that license when such was not the case.

3. At the time the license was issued to Respondent NHA, it did not have contracts with any insurers for health benefit plans to be provided to its members.

4. Respondent NHA, it did not have a contract with its members providing that NHA was the holder of health benefit plans on behalf of its members.

5. At the time the license was issued to Respondent NHA, it did not submit proposed actuarial models, underwriting methodologies, and marketing methodologies to the Commissioner.

6. On or about November 28, 2008, Respondent Wickes, acting as president of NHA, and Respondent Vest, acting as an agent for Respondent Athalon Agency, provided false or misleading information in an application for a high deductible small employer health plan from Humana Insurance Company (“Humana”) for the members of NHA, representing that the NHA members were employees of NHA when they were not.

7. Humana issued a high deductible small employer policy to NHA to cover its employees on January 1, 2009, with an individual deductible amount of \$5,000.00. When

Humana discovered that the NHA members were not employees of NHA, it rescinded the policy back to the date of issuance and refunded all premiums received less any claims paid, for a net refund of \$63,131.69, paid on February 7, 2010, by check made payable to "NHA."

8. On or about April 1, 2009, Respondent Wickes acting for Respondent NHA and Respondent Vest acting as an insurance agent for Respondent Athalon Agency, submitted a second application to Humana for a high deductible small group employer health plan, falsely representing members of NHA to be employees of RT Trucking. RT Trucking was a corporation organized in the State of Utah by Respondent Wickes. RT Trucking was not in the trucking business, had no employees and was simply a shell utilized to deceive Humana in order to obtain health insurance for NHA members as employees, and not as members of a voluntary health purchasing alliance. Humana issued a high deductible small employer policy to RT Trucking with an individual deductible amount of \$10,000.00.

9. On January 14, 2010, Humana rescinded all insurance for RT Trucking effective as of April 1, 2009, on the basis that the insureds were not employees as represented, and refunded all premiums net of claims paid in the amount of \$92,034.88.

10. Respondents NHA, Wickes, and Vest represented to the members of NHA that the portion of the funds collected that were not used to purchase insurance were to be placed in a Health Reimbursement Account ("HRA") for the benefit of employees. However, the fund created by NHA did not meet the legal requirements to qualify as a HRA in that the funds were not retained as the property of the employer, were aggregated and used to pay health insurance claims of all members as those claims were received instead of being accounted and used separately for each individual, employees contributed funds to the account, and self-employed persons were included in the fund created.

11. By creating a fund from which NHA paid claims from its members that were not

covered by insurance, NHA bore an insurance risk.

12. On or about July 12, 2009, Respondent Wickes acting for Respondent NHA and Respondent Vest acting as an insurance agent for Respondent Athalon Agency, submitted an application for a stop-loss insurance policy from HCC Life Insurance Company with NHA as the insured. The stop-loss policy did not cover NHA members directly, but provided coverage for the risk being carried by NHA if claims submitted to NHA by its members exceeded the amounts listed in the stop-loss policy.

13. NHA was not licensed as an insurer, and was not exempt from State regulation under the provisions of the Employee Retirement Income and Security Act of 1974.

14. By obtaining a stop-loss insurance policy from HCC Life Insurance Company, to cover excess losses from NHA's self-funding activities, Respondents NHA, Wickes, and Vest demonstrated their knowledge and intent that NHA act as an unauthorized insurer in bearing risk for the health insurance claims of NHA's members

15. Respondent Vest represented or caused to be represented to members of NHA that the HCC Life Insurance Company was a high deductible health insurance policy covering members with a deductible amount of \$5,000.00, and that funds being paid to NHA were to purchase a group health insurance policy and to fund HRA accounts, when none of these representations were true.

16. On or about July 1, 2009, Respondent Vest arranged for Respondent NHA to contract with Advanced Benefit Solutions ("ABS"), a third party administrator located in and licensed to do business in the State of Arizona, to act as a third party administrator for NHA. ABS is not licensed as a third party administrator in the State of Utah.

17. Vest has withdrawn his request for a hearing on the denial of his application for renewal of his resident insurance producer's license.

18. Vest has surrendered the licenses of Athalon Insurance Agency, LC and Athalon TPA Group, LLC, and the commissioner has accepted the surrender of those licenses.

Based upon the foregoing Stipulation and Findings of Fact, the Presiding Officer enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. In representing to the Department that NHA met all requirements for issuance of a health purchasing alliance when it had not, Respondent Vest violated Utah Code Annotated §§ 31A-2-202(6) and 31A-23a-402(1)(a)(i).

2. In failing to have contracts with at least three insurers for health insurance for the members of NHA to chose among, Respondent Vest violated, Utah Code Annotated § 31A-34-109(2).

3. In failing to have a contract with the members of NHA that provides that NHA was the holder of health benefit plans in behalf of its members, Respondent Vest violated Utah Code Annotated § 31A-34-110(1).

4. By failing to submit proposed actuarial models, underwriting methodologies, and marketing methodologies to the Commissioner, Respondent Vest violated Utah Code Annotated § 31A-34-106(2).

5. In providing material information in applications for insurance policies that was false or misleading, Respondent Vest violated Utah Code Annotated § 31A-23a-402(1)(a)(i), and said acts constitute a fraudulent insurance act under Utah Code Annotated § 31A-31-103(1)(a).

6. In allowing NHA to bear an insurance risk, Respondent Vest violated Utah Code Annotated § 31A-34-108(3)(b).

7. In self-funding health insurance for its members, Respondent NHA acted as an unauthorized insurer in violation of Utah Code Annotated §§ 31A-4-102 and -106.

8. Respondent Vest's actions assisted NHA to act as an unauthorized insurer, in violation of Utah Code Annotated §§ 31A-23a-116 and 31A-15-102.

9. In using the services of a third party administrator that was not licensed in the State of Utah, Respondent Vest violated Utah Code Annotated § 31A-25-201.

10. In violating the various provisions of the Utah Insurance Code, Respondent Vest demonstrates that he does not meet the character requirements of being competent and trustworthy to hold an insurance license under Utah Code Annotated § 31A-23a-107(2).

11. The insurance consultant's license of Respondent Vest should be revoked pursuant to the following: Utah Code Annotated § 31A-23a-111(5)(b)(i), unqualified to hold a license; - 111(5)(b)(ii)(A), has violated an insurance statute; -111(5)(b)(ix), provides information in a license application that is incorrect, misleading, incomplete, or materially untrue; - 111(5)(b)(xi), obtains a license through misrepresentation or fraud; -111(5)(b)(xv), admits to or is found to have committed an insurance unfair trade practice or fraud; -111(5)(b)(xvi), in the conduct of business uses fraudulent or dishonest practices, or demonstrates incompetence, untrustworthiness, or financial irresponsibility; and -111(5)(b)(xxiv), engages in a method or practice in the conduct of business that endangers the legitimate interests of customers and the public.

Based upon the foregoing Stipulation, Findings of Fact and Conclusions of Law, the Presiding Officer herewith enters the following Order:

ORDER

IT IS HEREBY ORDERED:

1. The withdrawal of the request for a hearing on the denial of Respondent Timothy Vest's resident individual insurance producer's license is hereby accepted and the denial of the renewal of that license is upheld.


2. The surrender of the insurance licenses of Respondents Athalon Insurance Agency, LC and Athalon TPA Group, LLC is hereby accepted effective December 1, 2011, and Respondents Athalon Insurance Agency LC and Athalon TPA Group, LLC shall immediately cease doing any insurance business as of that date.

3. The individual resident insurance consultant's license of Timothy Vest is hereby revoked effective December 1, 2011.

4. Respondent Timothy Vest shall, as of December 1, 2011, cease acting in any capacity which requires an insurance license in the State of Utah and shall not be an owner, partner, member, officer, director, or act as an agent, of any entity doing an insurance business in the State of Utah.

DATED this 17th day of November, 2011.

NEAL T. GOOCH
INSURANCE COMMISSIONER


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

NOTIFICATION

You are hereby notified that failure to abide by the terms of this Order may subject you

to further penalties, including additional forfeitures of up to \$5,000.00 per violation 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.

You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.