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

COMPLAINANT:	:	NOTICE OF INFORMAL PROCEEDING AND ORDER
UTAH INSURANCE DEPARTMENT	:	CEASE AND DESIST ORDER
RESPONDENTS:	:	Docket No. <u>2011-010 LC</u>
PERSONAL FAMILY PHYSICIANS Unlicensed	:	
4525 S. Wasatch Blvd., Suite 310 Salt Lake City, UT 84124	:	Enf. Case No. <u>2782</u>
DR. MICHAEL JENNINGS Unlicensed	:	
3374 Bernada Dr. Salt Lake City, UT 84124	:	

COMES NOW, Neal T. Gooch, Insurance Commissioner of the State of Utah, and in support of the following states:

JURISDICTION

Neal T. Gooch 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, §§ 31A-2-201 and 31A-1-105(2), and has commenced this Informal

Adjudicative Proceeding pursuant to Utah Code Annotated §§ 31A-2-201 and 63G-4-201 and Utah Administrative Code Rule R590-160. Based upon information contained in agency files or known to the Commissioner, the Commissioner makes the following:

FINDINGS OF FACT

1. Respondent Dr. Michael Jennings (“Jennings”), is a licensed physician in the State of Utah, and is a health care provider as defined under Utah Code Annotated § 78B-3-403(12).

2. On or about June 4, 2009, Respondent Jennings formed Respondent Personal Family Physicians, PLLC (“PFP”), as a professional limited liability company in the State of Utah. Jennings is the owner, member and manager of PFP.

3. Neither Jennings nor PFP are licensed in any capacity to do an insurance business under the laws of the State of Utah.

4. Sometime following the formation of PFP, Respondents began entering into arrangements with residents of the State of Utah to provide primary health care in exchange for prepaid compensation.

5. Respondents’ contract with their patients are for periods of one year which renews automatically unless 30 days notice is given by one of the parties of an intent not to renew.

6. Respondents’ contract with their patients provide for certain specified health care procedures and services to be provided in exchange for a yearly-prepaid fee.

7. Respondents’ contract with their patients asserts that the contract is “not an insurance policy”.

8. Respondents also provide physical therapy to their contracted patients through another entity that provides those services, and Respondents pay for those services for their contracted patients. Respondents also agree to pay for another physician to treat their contracted patients

when Jennings is out of town or otherwise unavailable, and to pay for those services on behalf of their contracted patients.

9. Respondents have a web site, www.pfpslc.com, in which they advertise and solicit the sale of their prepaid health care services.

Having entered his Findings of Fact, the commissioner now enters the following:

CONCLUSIONS OF LAW

1. Utah Code Annotated 31A-4-106 provides:

31A-4-106. Provision of health care.

(1) As used in this section, "health care provider" has the same definition as in Section 78B-3-403.

(2) Except under Subsection (3) or (4), unless authorized to do so or employed by someone authorized to do so under Chapter 5, 7, 8, 9, or 14, **a person may not:**

(a) **directly or indirectly provide health care;**

(b) **arrange for health care;**

(c) manage or administer the provision or arrangement of health care;

(d) **collect advance payments for health care;** or

(e) **compensate a provider of health care.**

(3) Subsection (2) does not apply to:

(a) a natural person or professional corporation that alone or with others professionally associated with the natural person or professional corporation, and **without receiving consideration for services in advance of the need for a particular service**, provides the service personally with the aid of nonprofessional assistants;

(b) a health care facility as defined in Section 26-21-2 that:

(i) is licensed or exempt from licensing under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(ii) does not engage in health care insurance as defined under Section 31A-1-301;

(c) a person who files with the commissioner a certificate from the United States Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of 1974 or other federal law;

(d) a person licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries, who:

(i) arranges for the insurance of all services under:

(A) Subsection (2) by an insurer authorized to do business in Utah; or

(B) Section 31A-15-103; or

(ii) works for an uninsured employer that complies with Chapter 13, Employee Welfare Funds and Plans; or

(e) an employer that self-funds its obligations to provide health care services or

indemnity for its employees if the employer complies with Chapter 13, Employee Welfare Funds and Plans.

(4) A person may not provide administrative or management services for another person subject to Subsection (2) and not exempt under Subsection (3) unless the person:

(a) is an authorized insurer under Chapter 5, 7, 8, 9, or 14; or

(b) complies with Chapter 25, Third Party Administrators.

(5) An insurer or person who provides, administers, or manages health care insurance under Chapter 5, 7, 8, 9, or 14 may not enter into a contract that limits a health care provider's ability to advise the health care provider's patients or clients fully about treatment options or other issues that affect the health care of the health care provider's patients or clients.

2. In providing health care to contracted patients in exchange for a prepaid fee,

Respondents have violated and are currently violating Utah Code Annotated § 31A-4-106.

3. By contracting with patients to provide health care services in exchange for a prepaid fee, Respondents are engaging in the provision of Health Care Insurance as defined in Utah Code Annotated § 31A-1-301(75).

4. In providing health care insurance to its contracted patients, Respondents are doing an Insurance Business as defined in Utah Code Annotated § 31A-1-301(85).

5. In doing an insurance business without complying with the requirements of Utah Code Annotated, Title 31A, Respondents are violating Utah Code Annotated § 31A-1-104

6. In advertising and soliciting the sale of their prepaid health care services on the Internet, Respondents are violating Utah Code Annotated § 31A-4-102(1).

7. In stating that the contract for prepaid health care was not an insurance policy when such is not the case, Respondents violated Utah Code Annotated § 31A-23a-402(1)(a)(i).

Having entered his Findings of Fact and Conclusions of Law, the commissioner now enters the following:

ORDER

1. Respondents and their officers, directors, members, managers, employees and agents shall immediately Cease and Desist doing any unauthorized insurance business in the State of Utah, including: soliciting the sale of prepaid health care services; making or proposing to make any contract for the provision of prepaid health care services; taking receiving or forwarding any application for insurance, including the provision of prepaid health care services; collecting or receiving, in full or in part, any prepaid fees for the provision of health care; publishing or disseminating any advertisement or information for prepaid health care, or representing or assisting any person to do an unauthorized insurance business or to procure insurance from an unauthorized insurer.

2. This Order shall become final fifteen (15) days after the date of mailing unless a written request for a hearing is received from the Respondent in the offices of the department prior to that date. A written request for a hearing shall be signed by the person making the request and shall state the basis for the relief requested.

NOTIFICATION

If you request a hearing regarding this matter, the department will be represented by M. Gale Lemmon, Assistant Attorney General, 160 East 300 South, Fifth Floor, P.O. Box 140874, Salt Lake City, Utah 84114-0874, Telephone Number (801) 366-0375. Failure to request a hearing will be considered a failure to exhaust administrative remedies and will preclude any further administrative or judicial review or appeal of this matter.

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, 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 pursuant to Utah Code Annotated §§ 31A-2-308(10) and 31A-15-102(5), any person who knowingly provides or assists in placing unauthorized insurance in the State of Utah is guilty of a felony.

Any person contesting this order may request a hearing, in writing, addressed to the insurance commissioner, within 15 days of the date of this Order.

DATED this 22nd day of February, 2011.

NEAL T. GOOCH
INSURANCE COMMISSIONER



MARK E. KLEINFELD

Presiding Officer
Utah Insurance Department
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Salt Lake City, UT 84114
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