

02-1295
No. _____

**OFFICIAL ORDER
OF THE
COMMISSIONER OF INSURANCE
OF THE
STATE OF TEXAS
AUSTIN, TEXAS**

Date: DEC 13 2002

Subjects Considered:

PRIVILEGE CARE, INC.
1000 West Wilshire, Suite 315, Oklahoma City, OK 73116

PRIVILEGE CARE, INC.
110 Marter Avenue, Suite 209, Moorestown, New Jersey 08057

DAVID WEINSTEIN
1000 West Wilshire, Suite 315, Oklahoma City, OK 73116

DAVID WEINSTEIN
110 Marter Avenue, Suite 209, Moorestown, New Jersey 08057

DAVID WEINSTEIN
2 Fieldstone Way, Moorestown, NJ 08057

MICHAEL GARNETT
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MARK A. MACCARIELLA
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PRIVILEGE CARE HEALTH & WELFARE FUND also known as
PRIVILEGE CARE EMPLOYEE HEALTH & WELFARE FUND
1000 West Wilshire, Suite 315, Oklahoma City, OK 73116

PRIVILEGE CARE HEALTH & WELFARE FUND also known as
PRIVILEGE CARE EMPLOYEE HEALTH & WELFARE FUND
110 Marter Avenue, Suite 209, Moorestown, New Jersey 08057

PRIVILEGE CARE MARKETING GROUP, INC.
141 Ganttown Road, Suite E, Turnersville, NJ 08012

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141 Ganttown Road, Suite E, Turnersville, NJ 08012

CHRISTOPHER S. ASHIOTES
141 Ganttown Road, Suite E, Turnersville, NJ 08012

MICHAEL DIVECE
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SCOTT RUTHERFORD
14923 Elmont, Houston, TX 77095

DONALD R. SMITH
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FIVE STAR MARKETING
1113 Edgefield Drive, Plano, TX 75075

PROFESSIONAL AND INDUSTRIAL TRADE WORKERS UNION also known as
PROFESSIONAL INDUSTRIAL AND TRADE WORKERS UNION
2370 Route 70 West, Suite 307, Cherry Hill, NJ 08002

PITWU HEALTH AND WELFARE FUND also known as
PRIVILEGE CARE PITWU HEALTH AND WELFARE FUND
110 Marter Avenue, Suite 209, Moorestown, NJ 08057

PITWU HEALTH AND WELFARE FUND also known as
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FRANKLIN J. MILITELLO
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LORETTA SMITH
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TIM FOSTER
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UNION PRIVILEGE CARE, INC.
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UNION PRIVILEGE CARE, INC.
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OAK TREE ADMINISTRATORS, INC.
8131 East Rosecrans, Suite 202, Paramount CA 90723

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BROKERAGE CONCEPTS, INC.
P.O. Box 61553, King of Prussia, PA 19406-0953

SPECTRUM REVIEW SERVICES, INC.
14405 Walters Road, Suite 900, Houston, TX 77014

SOUTHERN PLAN ADMINISTRATORS, INC.
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SOUTHERN PLAN ADMINISTRATORS, INC.
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AMERICAN HEARTLAND HEALTH ADMINISTRATORS, INC.
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JACK H.M. FERGUSON
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5604 Bayshore Dr., Memphis, TN 38115

EMERGENCY CEASE AND DESIST ORDER
DISCIPLINARY ACTION

General remarks and official action taken:

On this day the Texas Department of Insurance ("TDI"), through staff counsel for TDI, Rachel A. Longenecker and Doug Danzeiser, presented to the Commissioner of Insurance a verified application for an ex parte Emergency Cease and Desist Order. TDI alleges that the above Respondents have engaged in the unauthorized business of insurance and/or have been committing unfair or deceptive acts or practices by selling,

issuing, or administering fraudulent, false, or misleading health insurance in violation of TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6 § 3, 21.21 and 21.58A, and TEX. INS. CODE ANN. §§ 101.051 and 101.102, and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112.

The Respondents are: Privilege Care, Inc.; David Weinstein; Michael Garnett; Mark A. Maccariella, Privilege Care Health & Welfare Fund, also known as Privilege Care Employee Health & Welfare Fund; Privilege Care Marketing Group, Inc.; James M. Doyle; Susan Messner; Christopher S. Ashiotes; Michael DiVece; Scott Rutherford; Donald R. Smith; Five Star Marketing; Professional and Industrial Trade Workers Union, also known as Professional Industrial and Trade Workers Union; James Campbell; Franklin J. Militello; Dante A. Georeno; Cynthia Holloway; Sheila Bushong; Loretta Smith; Tim Foster; PITWU Health & Welfare Fund, also known as Privilege Care PITWU Health & Welfare Fund; Union Privilege Care, Inc.; Oak Tree Administrators, Inc.; Cherille G. Shelp; Aldrostar, S.A.; Brokerage Concepts, Inc.; Spectrum Review Services, Inc.; Southern Plan Administrators; American Heartland Health Administrators, Inc.; Jack H.M. Ferguson; Edwin W. Ehler also known as Edward Ehler; and James A. Glidewell.

Under TEX. INS. CODE ANN. § 83.051, the Commissioner of Insurance may issue an emergency cease and desist order if an authorized person engaging in the business of insurance is committing an unfair act or is in a hazardous condition. The Commissioner may also issue an emergency cease and desist order if an unauthorized person: is engaging in the business of insurance in violation of Chapter 101, or is engaging in the business of insurance in violation of Chapter 101 and is committing an unfair act; and the conduct is fraudulent, hazardous, creates an immediate danger to public safety, or is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect.

The Commissioner believes that Staff's Application meets the requirements of TEX. INS. CODE ANN. § 83.051 for the issuance of an emergency cease and desist order. Accordingly, the Commissioner finds as follows:

1. Of the Respondents, only Donald R. Smith ("Smith"), Scott Rutherford ("Rutherford"), Brokerage Concepts, Inc. ("Brokerage Concepts") and Spectrum Review Services, Inc. ("Spectrum") hold any license or authorization with TDI.
2. Smith and Rutherford hold agent licenses, specifically General Life, Accident, Health and HMO licenses pursuant to TEX. INS. CODE ANN. art. 21.07-1 § 2(a). Brokerage Concepts holds a third party administrator ("TPA") certificate of authority pursuant to TEX. INS. CODE ANN. art. 21.07-6. Spectrum holds a utilization review agent ("URA") certificate of authority pursuant to TEX. INS. CODE ANN. art. 21.58A.

3. The Respondents do not hold a certificate of authority to act as an insurer and have not filed any notice with the Commissioner of any claim for exemption from TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6 § 3 and TEX. INS. CODE ANN. § 101.102 with documents supporting such claim prior to commencing operations, as required by TEX. INS. CODE ANN. § 101.004.
4. Citizens of this State have health insurance issued by or through Respondents or administered by or through Respondents. Because Respondents are not authorized by law to do the business of insuring or administering risks in this State or to act as agents for the health insurance being provided, Texas citizens who have purchased policies from or through Respondents face serious risk of loss.
5. Respondents' activities to date have resulted in unpaid claims, which are not expected to be funded. The Respondents' health insurance plans are in a hazardous financial condition, and Respondents' continued conduct is an immediate danger to public safety.
6. The Respondents have failed to present evidence that any of the health insurance or plans that they offer, administer, or insure qualify for any exemption from state regulation.
7. Respondents are unauthorized persons engaging in the business of insurance in violation of TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6 § 3 and TEX. INS. CODE ANN. § 101.102, as defined in TEX. INS. CODE ANN. § 101.051, and are committing unfair acts in violation of TEX. INS. CODE ANN. art. 21.21 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112. Such conduct by Respondents is fraudulent, hazardous, creates an immediate danger to public safety, and is causing or can be reasonably expected to cause public injury that is likely to occur at any moment, is incapable of being repaired or rectified, and has or is likely to have influence or effect. Further, such conduct, designed to evade the insurance laws of the State of Texas, should immediately be stopped and enjoined.
8. Unless Respondents are immediately ordered to cease and desist, Respondents will continue to commit such unfair or deceptive acts or practices and engage in the business of insurance in Texas in an unauthorized and hazardous manner.
9. The Commissioner has authority and jurisdiction over this matter pursuant to TEX. INS. CODE ANN. §§ 83.001 – 83.055, 101.001 -- 101.156, and TEX. INS. CODE ANN. arts. 1.14, 3.95-2, 21.07-6, 21.21 and 21.58A, 28 TEX. ADMIN. CODE §§ 1.901 *et seq.*, 7.1601-7.1617, 7.1901-1915, 19.1701-1722, and 21.1-21.122, and TEX. GOV'T CODE ANN. §§ 2001.051 - 2001.178.

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IT IS THEREFORE ORDERED that Respondents, their agents, employees, and/or other representatives, shall immediately cease and desist from doing the following:

1. Taking any actions concerning funds which have been collected, received or derived in the course of the unauthorized business of insurance in or from Texas or commingled with such funds, except as directed by the Texas Department of Insurance;
2. Permitting or allowing any third party to take any actions concerning funds which have been collected, received or derived in the course of the unauthorized business of insurance in or from Texas or commingled with such funds, except as directed by the Texas Department of Insurance;
3. The making of or proposing to make, as an insurer, an insurance contract without having first obtained a certificate of authority from the Texas Department of Insurance to conduct business as an insurer;
4. The taking or receiving of any application for insurance, other than by a licensed insurance agent acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations, except as authorized by law;
5. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration in this state or from residents of this state for any insurance or any part thereof, other than by a licensed insurance agent or licensed third party administrator acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations, except as authorized by law;
6. The issuance or delivery of contracts of insurance other than by a licensed insurance agent acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in Texas in compliance with all applicable statutes and regulations;
7. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in or from this state, other than by a licensed insurance agent or licensed third party administrator acting on behalf of an insurer possessing a certificate of authority to do the business of insurance in

- Texas in compliance with all applicable statutes and regulations except as authorized by law;
8. Contracting to provide indemnification or expense reimbursement from this state or in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, agent, administrator, trust, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise, except as authorized by law;
 9. Acting as a third party insurer of an employer health plan without possessing a certificate of authority to do the business of insurance in Texas or acting as an agent or administrator of such an insurer;
 10. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;
 11. The doing of any kind of insurance business in or from Texas specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance, except as authorized to do so through a license or certificate of authority issued by the Department of Insurance, except as authorized by law; and
 12. The doing or proposing to do any business in or from Texas in substance equivalent to any of the acts defined in TEX. INS. CODE ANN. § 101.051 as doing an insurance business, in a manner designed to evade the provisions of Texas statutes.

IT IS FURTHER ORDERED that this Order is effective immediately and shall continue in force and effect until further order of the Commissioner of Insurance. This Order is binding on Respondents, their agents, employees, and/or other representatives.

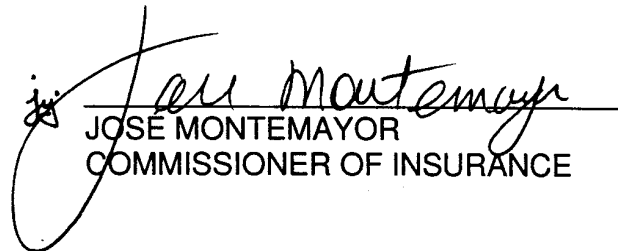
PURSUANT TO TEX. INS. CODE ANN. § 83.053, ANY PERSON AFFECTED BY THIS ORDER AND WHO SEEKS TO CONTEST IT HAS THE RIGHT TO REQUEST A HEARING BEFORE THE COMMISSIONER, OR HIS DULY APPOINTED

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REPRESENTATIVE, TO SHOW CAUSE WHY THIS ORDER SHOULD NOT BE AFFIRMED. THE PERSON AFFECTED MUST MAKE THE REQUEST NOT LATER THAN THE 30TH DAY AFTER THE DATE ON WHICH THE PERSON RECEIVES THIS ORDER. THE REQUEST MUST BE IN WRITING DIRECTED TO THE COMMISSIONER AND MUST STATE THE GROUNDS FOR THE REQUEST TO SET ASIDE OR MODIFY THE ORDER. Pending hearing, this Order shall continue in full force and effect unless stayed by the Commissioner. Any such hearing shall be conducted according to the procedures for contested cases under TEX. GOV'T CODE ANN. §§ 2001.051- 2001.062.

IN THE EVENT THIS ORDER IS VIOLATED, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY OF \$25,000 FOR EACH ACT OF VIOLATION, OR DIRECT THE PERSON AGAINST WHOM THE ORDER IS ISSUED TO MAKE COMPLETE RESTITUTION, IN THE FORM AND AMOUNT AND WITHIN THE PERIOD DETERMINED BY THE COMMISSIONER, TO ALL TEXAS RESIDENTS, TEXAS INSUREDS, AND ENTITIES OPERATING IN TEXAS HARMED BY THE VIOLATION OR FAILURE TO COMPLY, OR THE COMMISSIONER MAY IMPOSE BOTH THE PENALTY AND ORDER RESTITUTION.


JOSE MONTEMAYOR
COMMISSIONER OF INSURANCE