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8

9 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
10 OF THE STATE OF CALIFORNIA

11 **IN THE MATTER OF:**

12
13 **HealthcareOne, LLC and Michael Jay**
14 **Ellman,**

15 **Respondents.**
16
17
18

) **Enforcement Matter No.: 08-474**

) **CEASE AND DESIST ORDER**

) **(Health and Safety Code sections 1349,**
) **1360, 1386, 1391, and 1395; and California**
) **Code of Regulations, title 28, sections**
) **1300.67.4(a)(3)(A) and 1300.68(a))**

19
20 **TO: HealthcareOne, LLC**
c/o Lawdock, Inc.
21 One Renaissance Square, Suite 300
22 Two North Central Avenue
Phoenix, AZ 85004-2391

Michael Jay Ellman


23 Principal Place of Business:
24 3220 S. Fair Lane, Suite 12
25 Tempe, AZ 85282

26
27 The Director of the Department of Managed Health Care, by and through her designee, Assistant
28 Deputy Director, Amy L. Dobberteen, after investigation, determines as follows:

F I L E D

FEB 17 2010

DEPARTMENT OF MANAGED HEALTH CARE
By *Lee Bull*
Filing Clerk

1 I.

2 INTRODUCTORY STATEMENT

3 1. California Health and Safety Code, section 1349 requires certain entities arranging for
4 health care services to first obtain a license from the California Department of Managed Health Care.
5 Respondents are acting as health care service plans, arranging for the provision of health care services,
6 and accepting periodic payments. Accordingly, they are operating as health care service plans as
7 defined in Health and Safety Code, section 1345(f)(1), and are required to be licensed under the Knox-
8 Keene Health Care Service Plan Act of 1975 (Knox-Keene Act). Respondents' failure to obtain a
9 license subjects them to the enforcement powers of the Department of Managed Health Care.

10 2. In violation of California law, the Arizona limited liability corporation and California
11 resident set forth below are soliciting California residents for purposes of selling health care services
12 without a license, misleading California consumers and misrepresenting their products. Respondents
13 verbally purport to provide health insurance during the solicitation process; however, after members
14 receive their enrollment documents, they discover that Respondents' products are discount health plans,
15 and not the insurance product they were promised. While Respondents' websites and enrollment
16 documents claim to provide networks of over 900,000 providers who offers discounts on healthcare
17 services, members report being unable to locate providers who would honor any discounts, rendering the
18 benefits illusory. Moreover, Respondents make it difficult for members to cancel their memberships and
19 obtain refunds, contrary to Respondents' promise of a 30-day money back guarantee, indicative of an
20 inadequate grievance process, and in addition to all of the above, an unfair business practice.

21 3. Therefore, the Department of Managed Health Care, by the Order below, hereby directs
22 Respondents to cease and desist from any further unauthorized, deceptive and unlawful activity in the
23 State of California.

24 II.

25 PARTIES

26 4. **MICHAEL JAY ELLMAN** is an individual residing in Orange County, California, and
27 has held himself out as the President and CEO of **HEALTHCAREONE, LLC**. **MICHAEL JAY**
28

1 **ELLMAN** is listed as the sole Manager/Member of **HEALTHCAREONE, LLC** on the Arizona
2 corporation documents.

3 5. **HEALTHCAREONE, LLC** is an Arizona limited liability corporation doing business in
4 California. It is believed that **HEALTHCAREONE, LLC**'s principal place of business is located at
5 3220 S. Fair Lane, Suite 12, Tempe, AZ 85282. **HEALTHCAREONE, LLC**, under the exclusive
6 control of Respondent **MICHAEL JAY ELLMAN**, is a health care service plan, as defined in Health
7 and Safety Code, section 1345(f)(1), and is required to obtain a license.

8 6. Also operating out of the business location at 3220 S. Fair Lane, Suite 12, Tempe, AZ
9 85282 are unincorporated entities Elite Healthcare, Republic Healthcare, Easy Life Healthcare and
10 Global Healthcare. In addition to operating at the same place of business in Tempe, Arizona,
11 Respondents and these unincorporated entities are engaging in common deceptive advertising and
12 solicitation practices, providing illusory benefits, and conducting identical unfair business practices,
13 demonstrating that they are affiliated or acting in concert. Elite Healthcare, Republic Healthcare, Easy
14 Life Healthcare and Global Healthcare are also health care service plans, as defined in Health and Safety
15 Code, section 1345(f)(1), and are required to obtain licenses.

16 III.

17 STATUTORY AUTHORITY

18 7. The Director of the Department of Managed Health Care is vested with the responsibility
19 to administer and enforce the Knox-Keene Act. The intent and purpose of the Knox-Keene Act is to
20 promote the delivery and quality of health and medical care to the people of California who enroll in a
21 health care service plan by, among other things: "Prosecuting malefactors who make fraudulent
22 solicitations or who use deceptive methods, misrepresentations, or practices, which are inimical to the
23 general purpose of enabling a rational choice for the consumer public." (Health and Safety Code,
24 sections 1341 and 1342(c).)

25
26 8. Health and Safety Code, section 1345(f)(1) defines a health care service to
27 mean:
28

1 Any person who undertakes to arrange for the provision of health care services to
2 subscribers or enrollees or to reimburse any part of the cost for those services, in
3 return for a prepaid or periodic charge paid by or on behalf of the subscribers or
4 enrollees.

5 9. The Legislature has plainly evidenced its intent as to the application of the Knox-Keene
6 Act in Health and Safety Code, section 1399.5, which provides (in part):

7 It is the intent of the Legislature that the provisions of this chapter shall be
8 applicable to any private or public entity or political subdivision, which, in
9 return for a prepaid or periodic charge paid by or on behalf of a subscriber or
10 enrollee, provides, administers or otherwise arranges for the provision of
11 health care services....

12 10. Any person conducting business as a health care service plan is required to have a
13 license under the Knox-Keene Act pursuant to Health and Safety Code, section 1349, which
14 provides:

15 It is unlawful for any person to engage in business as a plan in this state or to
16 receive advance or periodic consideration in connection with a plan from or on
17 behalf of persons in this state unless such person has first secured from the
18 director a license, then in effect, as a plan or unless such person is exempted by
19 the provisions of Section 1343 or a rule adopted hereunder. A person licensed
20 pursuant to this chapter need not be licensed pursuant to the Insurance Code to
21 operate a health care service plan or specialized health care service plan unless
22 the plan is operated by an insurer, in which case the insurer shall also be
23 licensed by the Insurance Commissioner.

24 11. Untrue and misleading advertising and solicitation, both by affirmative misstatement and
25 by omission of important information, are prohibited by Health and Safety Code, section 1360, which
26 provides:

27 (a) No plan, solicitor, solicitor firm, or representative shall use or permit the
28 use of any advertising or solicitation which is untrue or misleading, or any
form of evidence of coverage which is deceptive. For purposes of this
article:

1. A written or printed statement or item of information shall be
deemed untrue if it does not conform to fact in any respect, which is,
or may be significant to an enrollee or subscriber, or potential enrollee
or subscriber in a plan.

1 2. A written or printed statement or item of information shall be
2 deemed misleading whether or not it may be literally true, if, in the
3 total context in which the statement is made or such item of
4 information is communicated, such statement or item of information
5 may be understood by a person not possessing special knowledge
6 regarding health care coverage, as indicating any benefit or
7 advantage, or the absence of any exclusion, limitation, or
8 disadvantage of possible significance to an enrollee, or potential
9 enrollee or subscriber, in a plan, and such is not the case.

8 (b) No plan, or solicitor, or representative shall use or permit the use of any
9 verbal statement which is untrue, misleading, or deceptive or make any
10 representations about coverage offered by the plan or its cost that does not
11 conform to fact. All verbal statements are to be held to the same standards as
12 those for printed matter provided in subdivision (a).

12 12. California Code of Regulations, title 28, section 1300.67.4(a)(3)(A) prohibits plans from
13 offering illusory benefits. It provides: "A benefit afforded by the contract shall not be subject to any
14 limitation, exclusion, exception, reduction, deductible, or co-payment, which renders the benefit
15 illusory."

16 13. California Code of Regulations, title 28, section 1300.68(a) requires that every health
17 care service plan shall establish a grievance system pursuant to the requirements of section 1368 of
18 the Act.

19 14. Health and Safety Code, section 1386(b)(7) specifically proscribes conduct that
20 constitutes fraud or dishonest dealing or unfair competition, as defined by section 17200 of the Business
21 and Professions Code.

22 15. Health and Safety Code, section 1395 further prohibits inexact or misleading price
23 advertising and offers of gifts or bait, as follows:

24 ...Any price advertisement shall be exact, without the use of such phrases as
25 "as low as," "and up," "lowest prices" or words or phrases of similar
26 import.... Price advertising shall not be fraudulent, deceitful, or misleading,
27 nor contain any offers of discounts, premiums, gifts, or bait of similar nature.
28 In connection with price advertising, the price for each product or service
shall be clearly identifiable.

1 service plan in this state and receiving advance and periodic consideration from or on behalf of persons
2 in this state, without having first secured a license from the Director. This conduct violates Health and
3 Safety Code, section 1349.

4 18. **THEREFORE**, the Department of Managed Health Care hereby directs Respondents to
5 obtain a Knox-Keene Act license, and to cease and desist from any further unlicensed and/or illegal
6 activity in the State of California, directly or indirectly through affiliated entities, as set forth below.

7 **B. Misleading Advertising and Solicitation With Regard to**
8 **Nature of Product or Services**

9 19. Respondents' advertising and solicitation practices are misleading by using language that
10 is generally associated with insurance coverage, such as set forth specifically, but without limitation,
11 below, and terminology that is likely to mislead consumers. These practices are in violation of Health
12 and Safety Code, sections 1360(a)(1)(2) and (b), California Code of Regulations, title 28, section
13 1300.67.4(a)(3)(A), and Respondents' practices described herein constitute fraud, or dishonest dealing,
14 or unfair competition, as defined by section 17200 of the Business and Professions Code, in violation of
15 Health and Safety Code, section 1386(b)(7).

16 20. Respondent **HEALTHCAREONE, LLC**, in its advertising and solicitation practices, is
17 using terms which are generally associated with insurance coverage and therefore likely to mislead
18 consumers. On its Internet websites, print and television advertisements, and in its verbal
19 representations³, Respondents are using misleading language such as:

- 20 a. "Healthcare for the People;"
- 21 b. "100% Guaranteed Acceptance," "Guaranteed Acceptance" or "Everyone is Accepted;"
- 22 c. "Existing Medical Conditions OK" or "No Waiting";
- 23 d. "A Real Healthcare Plan Starting For As Little As About 25 Cents a Day!"

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25
26 ³ In addition television, radio, print and telephone marketing, Respondent advertises its health care
27 programs on multiple Internet websites, including: www.healthcareone.com, www.health-care-one.com,
28 www.hcomedicalplan.com, www.healthcareonedirect.com, www.hcohealth.com, and
www.dentalplanone.com. (Last accessed January 20, 2010.)

- 1 e. "HealthcareOne™ is a comprehensive Healthcare Program that makes healthcare
2 affordable for everyone."
- 3 f. Respondent claims that the company was founded by experts in the health care and
4 finance industries "To instill trust and faith while offering access to healthcare for
5 everyone, regardless of pre-existing conditions and/or medical history."
- 6 g. "A recent poll of healthcare professionals by Modern HealthCare Magazine rated
7 HealthcareOne healthcare network as best among competing organizations in the areas of
8 'Effective Pricing,' 'Added Values,' 'Quality' and 'Service.' The doctor treats the
9 patient."
- 10 h. With respect to its dental plan, Respondent advertises "No age restrictions," "No
11 residency restrictions," "No restrictions for existing medical conditions," and "guaranteed
12 acceptance".
- 13 i. "Discounted hospital services may require pre-authorization and proof of ability to pay in
14 order to qualify for discounts."

15 Moreover, Respondent is using language which is untrue or deceptive, such as there are
16 "Over 900,000 healthcare providers to choose from," which is also in violation of section 1360.
17 Respondents' advertising is misleading, in violation of section 1360, subdivision (b), since in the total
18 context in which the statements are made or communicated, such statements may be understood by a
19 person not possessing special knowledge regarding health care coverage as indicating that the product
20 being offered is health insurance, which is a significant and material fact for any potential enrollee or
21 subscriber in a plan.

22 21. Respondents advertise a health care plan for \$69.95 per month on the Internet website
23 www.hcohealth.com, by using the following misleading statements:

- 24 a. "WARNING: UNINSURED AMERICANS PUT THEIR HEALTH AT RISK!"
- 25 b. "ALERT! DEADLINE CLOSE FOR NATIONAL HEALTHCARE PLAN OPEN
26 REGISTRATION"
- 27 c. "NY Times January 2008 editorial stated 'Having No Insurance Leads to Poor Health.'"
- 28 d. "Harvard Medical School researchers found 'the uninsured got sicker at a faster rate than
those with insurance.'"

- 1 e. "American Cancer Society research associates lack of health insurance with less access to
2 health care hence poorer outcomes for cancer patients, with lack of screening and
3 preventing cancer diagnosis at earlier stages."
4 f. "Health Care Includes Physicians, Specialists, Hospitals, Labs, 24/7 registered Nurse
5 Hotline, Health Information Library, Dental, Vision, Hearing, Podiatry and Chiropractic
6 Services."

7 In addition, this website fails to disclose that the product being offered is a discount health
8 plan. Respondents' advertising is misleading, in violation of section 1360, subdivision (b), since in
9 the total context in which the statements are made or communicated, such statements may be
10 understood by a person not possessing special knowledge regarding health care coverage as indicating
11 that the product being offered is health insurance, which is a significant and material fact for any
12 potential enrollee or subscriber in a plan.

13 22. Respondents, in their television advertisements, which are also available for viewing on
14 the Internet through YouTube's website at www.youtube.com (last accessed January 21, 2010), are
15 using or permitting the use of untrue, misleading and/or deceptive advertising, such as, but not limited
16 to:

- 17 a. With an image which appears to be the White House in the background of the
18 advertisement, "Healthcare Alert! Daily registration limits have been established for all
19 Americans seeking affordable access to healthcare. Register now for immediate
20 acceptance."
21 b. If you are one of the millions of Americans now living without healthcare protection,
22 stop and listen, you now have a solution.
23 c. "Announcing open registration for an affordable national healthcare discount program."
24 d. With the number 900,000 in the background, "Thousands of doctors, hospitals, and
25 pharmacies are now joined with HealthcareOne to provide you with the most affordable
26 healthcare programs available."
27 e. "And you will not be turned down regardless of age, medical condition, income or
28 residency. Now for less than three dollars a day, you could save thousands of dollars off
your family medical bills."
f. "Don't delay! Call now, we will only accept 650 new registrations a day."
g. "Your health and your family's health are worth making this call."

1 Respondents' use of the above statements in its advertising is misleading, as are the statements
2 themselves, in violation of section 1360, subdivision (b).

3 23. Respondents are also using or permitting the use of verbal statements which are untrue,
4 misleading, or deceptive, by making verbal representations about coverage offered by the plan that does
5 not conform to fact, in violation of section 1360, subdivision (b). Respondent **HEALTHCAREONE,**
6 **LLC** has made untrue, misleading and/or deceptive verbal representations to consumers that do not
7 conform to fact such as, but not limited to:

- 8 a. The product being sold is insurance, when in fact, Respondent's website and enrollment
9 documents confirm that Respondent is selling a discount health plan.
- 10 b. Company pays 60% of all claims, including hospital stays; however, Respondents do not
11 pay claims, and none of Respondent's written materials conform to this statement.
12 Respondents' websites and enrollment materials indicate members will get a discount on
13 health care services, which requires members to pay for health care services.
- 14 c. The plan is assisting families to get insurance from the government, when in fact no such
15 affiliation with the government exists, and Respondents are not selling insurance, which
16 requires consumers to pay for health care services up front.
- 17 d. The plan includes "covered" doctor's visits, hospital stays, etc., which misleads
18 consumers to believe that Respondent's product is similar to health insurance and will
19 pay for medical services, when in fact Respondent does not "cover" such services, but
20 rather claims to offer discounts that its members will receive when accessing such
21 services.
- 22 e. There is no co-payment for certain health care services, such as doctor's visits or hospital
23 stays, which is deceptive because it suggests that there will be no out-of-pocket payment
24 required from the member, when in fact the plan does not pay any claims and members
25 are obligated to pay all expenses associated with the health care services they seek up
26 front.

27 **C. Prohibited Inexact Price Advertising**

28 24. Respondents advertise savings of "5-60%", "10%-60%" and "20%-60%" on health care
services on various Internet home pages. In addition to being in violation of section 1360 for being
misleading and deceptive, Respondent is in violation of section 1395, due to the use of prohibited
inexact prices and inconsistent discounts in multiple sections of Respondent's website, including, but
not limited to:

- 1 a. On the home page of its website www.healthcareone.com, Respondent advertises “Plus
2 save from 10%-60% on brand and generic prescription drugs at over 60,000 pharmacies
3 nationwide...”, however, on the “Prescription Drugs” page of the website, Respondent
4 claims a savings of **10%-60% or more** at over 59,000 pharmacies nationwide, and on
5 that same page, also indicates “Actual in store savings may **exceed 60%**.” [Emphasis
6 added.]
- 7 b. On the home page of its website www.health-care-one.com, Respondents advertises “5-
8 60% savings on Healthcare”, “20-45% on Medical Care”, “10-50% on Prescription
9 Drugs”, and “20-60% on Dental Care”; however, on a different page, Respondents state
10 that you can “Save **over 50%** on prescription drugs...**up to 60%** on dental care, and **as
11 much as 62%** on hearing aids. [Emphasis added.]

12 25. Respondents, with respect to its dental plans, advertises savings of “up to 60%” on dental
13 care costs, including cleanings, fillings, orthodontics, root canals, and crowns⁴. Respondents’ conduct
14 further constitutes prohibited inexact price advertising, in violation of section 1395.

15 **D. Illusory Benefits**

16 26. Respondent **HEALTHCAREONE, LLC**, on its internet website, advertises it has “Over
17 900,000 healthcare providers to choose from.” However, members report having difficulty locating
18 providers that would provide discounts on services, thus rendering the benefits being offered by
19 Respondents illusory, in violation of California Code of Regulations, Title 28, section
20 1300.67.4(a)(3)(A) and Health and Safety Code section 1360.

21 **E. Improper Use of Bait and/or Gifts**

22 27. Respondents offer a “\$500 SIGN-UP BONUS: 5-Year Membership in
23 HealthcareOneRX National Prescription Drug Card”⁵ and a “24-hour Nurse Hotline” on one of their
24 Internet websites. The 24-hour Nurse Hotline is a health care service. By making such offers,
25 Respondents are using a bait and/or gift to solicit enrollment, which violates Health and Safety Code,
26 section 1395. Respondents also offer “FREE 2 Months of Membership w/Annual Membership fee,”
27 which also constitutes a bait and/or gift in violation of section 1395.

28 ⁴ Respondent advertises savings of “up to 60%” on the Internet websites <http://www.dentalplanone.com>
and <http://www.health-care-one.com>. (Last accessed January 20, 2010.)

⁵ While they offer the same bonus in other advertisements, the amount “\$500” is not always included.

1 Respondents, on their website for the HealthcareOne Dental Plan, offer an “EXTRA BONUS FOR
2 SENIORS: FREE vision, hearing, podiatry & chiropractic care + SAVE \$95 on a waiver of the standard
3 enrollment fee” and a “\$500 Sign-Up Bonus!...FREE 5-Year Membership in HealthcareOne RX
4 National Prescription Discount Card Plan when you join HealthcareOne”. This conduct also constitutes
5 the improper use of baits and/or gifts, in violation of section 1395.

6 29. Respondents, on the website www.healthcareonedirect.com, offer or allow to be offered a
7 bonus card “Prepaid Mastercard.” This conduct also constitutes the improper use of baits and/or gifts, in
8 violation of section 1395.

9 30. At the end of a commercial advertisement posted on the Internet website
10 www.youtube.com, Respondents offer a “Free! 5-Year Rx Card.” This conduct also constitutes the
11 improper use of baits and/or gifts, in violation of section 1395.

12 **F. Failure to Maintain Grievance Process**

13 31. After consumers enroll, Respondents do not provide adequate assistance. Many
14 consumers have complained regarding difficulty in cancelling their enrollments, due to the Respondents’
15 conduct, such as:

- 16 a. Despite the Respondents’ promise of unconditional money back guarantee on the first
17 month’s payment if the member calls within 30-days to cancel – “no questions asked,”
18 upon attempts to cancel, members were told to submit a request for cancellation in
19 writing.
- 20 b. Respondents failed to provide enrollment materials to members within the 30-day period
21 in which it allows for an enrollee to cancel their membership in order to receive a refund
22 of the first month’s membership fee, therefore making it unfeasible for the member to
23 timely cancel their membership and receive a refund.
- 24 c. Members reported significant delays in receiving promised refunds from Respondents.

25 32. Respondents also fail to provide adequate assistance to members who attempted to use
26 the discount health plans they purchased. Members who attempted to use the discount cards reported
27 that they were unable to locate providers willing to provide the promised discounts. This is also
28 indicative of Respondents’ failure to maintain a grievance process.

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V.

CEASE AND DESIST ORDER

Based on the foregoing, the Director finds that Respondents have violated Health and Safety Code, sections 1349, 1360(a)(1), (a)(2) and (b), 1386(b)(7), 1395 and California Code of Regulations, title 28, sections 1300.67.4(a)(3)(A) and 1300.68(a).

THEREFORE, pursuant to Health and Safety Code, section 1391 of the Knox-Keene Act:

IT IS HEREBY ORDERED:

1. That Respondents, and any of their directors, officers, trustees, managers, affiliates, agents, predecessors, and all persons participating with them or acting in concert with them, shall immediately **CEASE AND DESIST FROM:**

- a. Operating in California without a Knox-Keene Act license;
- b. Promoting any further deceptive or misleading advertisements or solicitations to California residents:
 - (1) By using language indicating the product being sold is insurance;
 - (2) Making claims about the product which are untrue;
 - (3) Claiming an inflated number of providers exist who are available to members;
or
 - (4) Asserting that Respondents “pay claims” and/or that “no co-payment” is required.
- c. Disseminating any inexact price advertisements or offering any gifts or bait to induce enrollment by California residents;
- d. Conducting any enrollment activities in California for health care memberships, including, but not limited to, medical, dental, vision, hospitalization, and pharmacy benefits;
- e. Taking, receiving, or forwarding any application for health care memberships from California residents; and
- f. Collecting or receiving, in full or in part, any payments for health care memberships from or on behalf of California residents.

1 2. Respondents shall disclose conspicuously in any advertisement, Internet web page, or
2 solicitation that may reasonably be viewed by residents of the State of California that their health care
3 membership product is not available in the State of California.

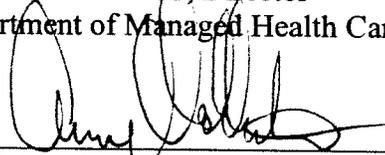
4 3. Respondents shall refund all monies paid by current or former California enrollees or
5 members, including processing fees collected, to any and all demanding enrollees or members who did
6 not use the program, without undue delay. For any requests for refunds submitted after the date of this
7 Order, Respondents shall issue a refund within 30 days of the request.

8 4. Within 30 days of the date of this Order, Respondent shall provide a copy of its
9 membership list to the Department. This list shall include all current and former California members'
10 names, addresses, telephone numbers, identification numbers, dates of membership, amount of monies
11 received from member, and dollar amount (if any) of refunds Respondent has made to members.

12 5. Within 30 days of the date of this Order, Respondent shall provide a copy of this Order
13 and a notice of cancellation of membership to every California enrollee. The notice of cancellation shall
14 inform members that they may contact the Department of Managed Health Care's Help Center if they
15 have any questions at 1-888-466-2219.

16 Dated: February 17, 2010

LUCINDA EHNES, Director
Department of Managed Health Care



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19
20 By: AMY L. DOBBERTEEN
21 Assistant Deputy Director
22 Department of Managed Health Care
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