



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

FILED
MAR 30 2001
TREASURER AND
INSURANCE COMMISSIONER
Docketed by: JP

TOM GALLAGHER

IN THE MATTER OF:

N.A.P.T.
NAPT
National Association of Physical Therapists
National Association of Professionals & Technicians
National Association of Professional Technical
National Association of Professional Truckers
National Association of Professional Traders
National Association of Chiropractic Professionals
National Association of Dental Professionals [Dental Division]
National Tourism & Hospitality Association [Division]
National Veterinarian Association
National Real Estate Association [Division]
Collectively referred to as "N.A.P.T."

Physician's Choice Limited a/k/a Physician's Choice LTD.

-and-

Case No.: 41331-01-CO

DAVID WEINSTEIN,
Individually, and as "Group Administrator" of N.A.P.T.
(Date of birth 1/20/59; N.J. D/L W22921566101594)

IMMEDIATE FINAL ORDER

TO: N.A.P.T.
1500 Walnut St., Ste. 1030
Philadelphia, PA. 19102

Physician's Choice, LTD
140 E. Butler Ave., 2d Fl.
Philadelphia, PA 19002

David Weinstein
A.P.O. Box 4609
Cherry Hill, N.J. 08034

N.A.P.T.
803 E. Willow Grove Ave.
Wyndmoor, PA 19038

David Weinstein
1500 Walnut St., Ste. 1030
Philadelphia, PA. 19102

David Weinstein
2 Fieldstone Way
Moorestown, N.J. 08057

N.A.P.T.
P.O. Box 40919
Philadelphia, PA 19107

David Weinstein
803 E. Willow Grove Ave
Wyndmoor, PA 19038

YOU ARE HEREBY NOTIFIED that pursuant to the Florida Insurance Code including, Sections 624.307, 624.317, 624.318, 626.201, and 120.569, *Florida Statutes*, the Treasurer and Insurance Commissioner of the State of Florida has caused an investigation to be made of the insurance-related activities of N.A.P.T., its divisions, associations, and related organizations and entities (hereafter collectively referred to as N.A.P.T.). As a result of that investigation, the Treasurer and Insurance Commissioner finds:

1. N.A.P.T. is not currently licensed or authorized, nor has it ever been licensed or authorized to transact insurance, or to operate as a Multiple Employer Welfare Arrangement (hereafter, MEWA) in this State. All insurers and MEWAs are required by Florida law to hold a Florida Certificate of Authority in order to conduct business in this State.

2. Despite the absence of any certificate of authority to transact insurance or to operate a MEWA in this State, N.A.P.T. has in the past engaged and currently engages in the unlicensed, unauthorized, and therefore illegal business of insurance and/or as an illegal MEWA (as contemplated and defined by the *Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. ss.1001, et seq.*) [hereafter "ERISA"] in violation of the Florida Insurance Code including, Sections 624.401(2) and 624.437(2), and 626.901, *Florida Statutes*, respectively.

3. N.A.P.T. is not subject to any exception to the requirement of the Florida Insurance Code for a Certificate of Authority to engage in the business of insurance or to operate as a MEWA in Florida.

4. N.A.P.T. presently engages in the unlicensed, unauthorized, and therefore illegal, insurance business in Florida as an unlicensed, unauthorized, and therefore, illegal insurer and/or MEWA under the guise of establishing and operating one or more ERISA plans. It operates under a variety of pseudonyms, entity names, "divisions", "associations", and what appear to be product names including, but not limited

to:

N.A.P.T.

NAPT

National Association of Physical Therapists

National Association of Professionals & Technicians

National Association of Professional Technical

National Association of Professional Truckers

National Association of Professional Traders

National Association of Chiropractic Professionals

National Association of Dental Professionals [Dental Division]

National Tourism & Hospitality Association [Division]

National Veterinarian Association

National Real Estate Association [Division]

Physician's Choice Limited a/k/a Physician's Choice. LTD.

5. DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) is not currently licensed, nor has he ever been licensed, to engage in the insurance business in Florida in any capacity, including the operation, management, or administration of a MEWA.

6. DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) is not subject to any exception to the requirement of the Florida Insurance Code for licensure to engage in the insurance business in Florida or to operate, manage, or to administer a MEWA.

7. Despite the lack of any license to engage in the insurance business in this State, DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) has engaged and currently engages in the business of insurance in violation of the Florida Insurance Code including, but not limited to Sections 624.401(2), 624.437, and 626.901, *Florida Statutes*. He does so in ways that require licensure pursuant to the Florida Insurance Code, including as an agent, adjuster, managing general agent, and/or as third-party administrator. He adjusts or administers claims, makes determinations on whether claims will be paid, and approves or rejects applications for coverage. All of these activities require a license under the Florida Insurance Code.

8. The Department has, through its investigation, obtained information that N.A.P.T., which purports to be an "educational organization" according to registration records on file with the Secretary of State of the Commonwealth of Pennsylvania, is soliciting to provide, and is providing, health insurance benefits to the employees of numerous Florida employers, some of which include:

<u>NAME</u>	<u>LOCATION</u>
Esther G. Voss, M.D.	Tamarac, Fla.
Best Western AKU Tiki Inn	Daytona Beach Shores, Fla.
Oglesby Plants International	Altha, Fla.
Rent Free Realty, C.S.	Coral Springs, Fla.
Sun Cruz Casino	Dania Beach, Fla.
Karp Chiropractic Health Care Center	Fort Lauderdale, Fla.

9. The Department has, through its investigation, also obtained information that N.A.P.T. is soliciting to provide, and is providing, health benefits to numerous other Florida residents under what are purported to be individual health benefit contracts. Alternatively, such contracts are issued to the individuals under the ruse of purported membership in an "association", including those associations enumerated in Paragraph 4 hereof. In fact, such associations, if they exist at all, exist solely for the purpose of obtaining insurance, in violation of the Florida Insurance Code including, but not limited to Section 627.654, *Florida Statutes*. Among the Florida residents include:

<u>NAME</u>	<u>LOCATION</u>
Robert and Anne Lashbrook	Kissimmee, Fla.
Joel and Maureen Gilbert	Melbourne, Fla.

10. In conjunction with its solicitation, N.A.P.T. has placed and continues to publish, disseminate, circulate, and otherwise place before the public statements regarding the business of insurance that are untrue, deceptive, or misleading, including, that the coverage does not constitute insurance, and

that it is not subject to regulation by the Department, all in violation of the Florida Insurance Code including Sections 624.401(1), 624.437, and 626.9541, *Florida Statutes*.

11. As an unlicensed insurer or MEWA that has not satisfied the statutory requirements necessary to obtain a Certificate of Authority, N.A.P.T. presents a grave and immediate risk of financial harm to the residents of Florida. Specifically, without a determination by the Department that the insurer or MEWA meets the statutory capital, surplus, operational, and other requirements, the particularized harm resulting from its operation in Florida include:

A. The potential inability to meet its financial obligations to Florida residents and entities to whom and to which it has issued policies of insurance or other coverage contracts, caused in whole or in part by insufficient capital, surplus and reserves, by charging inadequate or otherwise actuarially unsound rates or premiums, and by enterprise management that is unlicensed, untrained, and unskilled in insurance operations.

B. The issuance of policies or contracts on forms that have not been approved by the Department of Insurance and which therefore do not contain the safeguards and disclosures for the benefit of the public that are required by the Florida Insurance Code;

C. The adverse financial impact upon healthcare providers from illicit insurance activity and from the non-payment of claims, when health care goods and services have been furnished to Florida residents in reliance, in whole or in part, upon the perception or representation that legitimate health insurance or HMO coverage existed to pay for the goods and services;

D. The adverse impact on future insurability of Florida residents who participate in such illegal plans, under statutes mandating guaranteed-issue health coverage for those persons having requisite prior creditable coverage from or through a legitimate health insurer or HMO.

12. The transaction of insurance by DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) without being licensed by the Department places Florida residents at grave and immediate risk. Florida law mandates the licensure of those who transact insurance in this State. Before,

and as a condition of licensure, applicants must submit an application to the Department of Insurance, undergo a background check, and pass an examination to determine competency to transact insurance. These statutes were enacted for the benefit and the protection of the insurance-buying public by requiring that only honest and competent individuals obtain an insurance license. The unlicensed transaction of insurance by DAVID WEINSTEIN therefore deprives Florida consumers of the benefits of such statutory requirements of competence and honesty.

13. Because the Florida Insurance Code, including, Section 626.451, *Florida Statutes* requires an appointing insurer to certify to the Department of Insurance the appointee's fitness to engage in the business of insurance, and to bind itself for the acts of the appointee, the domination of the entire N.A.P.T. operation by DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) creates an incestuous relationship that effectively circumvents all public safeguards afforded by the statute.

14. In State vs. Knott, 166 Fla. 835 (Fla., 1936), the Florida Supreme Court found "that the business of insurance so directly affects the public that it is generally considered to be affected with a public interest, and, being so, is subject to the regulation and control by the Legislature, which includes the power to license and regulate the agents through whom such business is conducted". Id. at 837. The Court further held that "it would be difficult to find a business that more vitally affects the public interest... Id. In Natelson vs. Department of Insurance, 454 So.2d 31 (Fla. 1st DCA, 1984), the court stated that the business of insurance is "greatly affected by the public trust". Id. at 31. Indeed, insurance contracts are characterized by the law as uberrimae fidei contracts, and as such are agreements "of utmost good faith".

15. Based upon the foregoing allegations, the Department of Insurance asserts that N.A.P.T. and DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) are engaging in the unauthorized and therefore illegal business of insurance in Florida in violation of the Florida Insurance Code including, Sections 624.410, 624.11, 626.112, 624.401(1), 624.437, 626.451, 626.9521, 626.9541, 626.901, and 627.410, *Florida Statutes*.

WHEREFORE, pursuant to the Florida Insurance Code including, Sections 120.569(2)(n) and 624.437(2), *Florida Statutes*, the Treasurer and Insurance Commissioner finds that the continued transaction of insurance without licensure by N.A.P.T. and DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*) and in violation of the Florida Insurance Code, constitutes an immediate danger to the public welfare so as to require the issuance of this Immediate Final Order.

Accordingly, IT IS HEREBY ORDERED:

A). N.A.P.T. and DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L W22921566101594*), whether acting in the State of Florida as an insurer, a Multiple Employer Welfare Arrangement, an insurance agent, an insurance agency, an insurance adjuster, a third-party administrator, a managing general agent, or otherwise engaging in the business of insurance, either directly or indirectly through named and unnamed persons, entities, agents, or otherwise, shall forthwith **CEASE AND DESIST** from the transaction of any new or renewal insurance business, including as a MEWA.

B). N.A.P.T. shall forthwith notify in writing each and every agent, broker, salesperson, and other marketing outlet that is presently or that has in the past been used to solicit, sell, or deliver its products of the cessation of N.A.P.T.'s business due to this Immediate Final Order and shall inform such persons and entities that no further applications will be accepted or contracts issued.

C). N.A.P.T. shall forthwith notify in writing each Florida subscriber, member, and beneficiary of, and each applicant for any N.A.P.T. product of the cessation of N.A.P.T.'s business in Florida, and that each such subscriber, member, beneficiary, and applicant should immediately obtain health coverage from a licensed insurer or Health Maintenance Organization. A copy of the proposed notice shall be furnished to the Department for approval within three (3) business days from the date of this Immediate Final Order, and within three (3) business days of the Department's approval of or modification to such notice, it shall be mailed to each Florida subscriber, member, beneficiary and applicant. Within three (3) business days thereafter, N.A.P.T. shall deliver proof satisfactory to the Department that such notices were mailed, which proof may consist of a computerized listing of the names and addresses of the addressees,

accompanied by an affidavit of DAVID WEINSTEIN (*Date of birth 1/20/59; N.J. D/L*

W22921566101594) attesting to the fact of and the date(s) that the notices were mailed. If more than one individual in any household is a subscriber, member, beneficiary or applicant, a single notice, properly addressed, to any one such person in that household shall constitute notice to all persons in that household.

In those situations in which N.A.P.T. contends that a group, association, or other multi-participant policy or contract was issued or applied for, it shall furnish the requisite notice to each participant, member, beneficiary, and person afforded or to be afforded coverage under each policy or contract. If there is more than one participant, member, beneficiary, or person afforded or to be afforded coverage within a single household, one notice, properly addressed to any one such person in that household shall constitute notice to all persons in that household.

D). N.A.P.T. shall, within fifteen (15) calendar days from the date hereof, retain, at its own cost and expense, a Florida-licensed third-party administrator acceptable to the Department, who shall process, adjust, and otherwise administer all Florida claims submitted under existing policies and contracts until all such claims have been paid or until further order of the Department.

E). N.A.P.T. shall continue to pay claims, and otherwise timely fulfill its contractual obligations to each subscriber, member, beneficiary, and provider until all Florida claims have been paid or until further order of the Department.

F). The entry of this Immediate Final Order, or any amendment thereto, shall not be interpreted as having, nor shall it have, the effect of abrogating any statutory, common law, or contractual rights of any subscriber, member, beneficiary, or person afforded coverage under any N.A.P.T. policy or contract, or of any person that furnished health care goods or services pursuant to or in reliance upon the existence of a contract with N.A.P.T.

G). The issuance of this Immediate Final Order and the procedural safeguards set forth herein are concluded to be fair under the circumstances due to the potential grave harm resulting from unauthorized insurance entities engaging in the business of insurance in Florida. A Notice of Intent to Issue a Cease and

Desist Order and Assess Penalty will be issued immediately following this Immediate Final Order.

Procedures set forth therein afford N.A.P.T., the other entities named herein, and DAVID WEINSTEIN

(Date of birth 1/20/59; N.J. D/L W22921566101594) the opportunity to request a proceeding pursuant to

Section 120.57, Florida Statutes.

DONE AND ORDERED this 30th day of MARCH, 2001.



A handwritten signature in black ink, appearing to read "Tom Gallacher", is written over a horizontal line.

TOM GALLACHER
Treasurer and
Insurance Commissioner

NOTICE OF RIGHTS

You are hereby notified pursuant to Section 120.569(1), *Florida Statutes*, that you have the right to request a hearing. The request for hearing must be in writing and filed with the Department within five (5) days of the receipt of this Order, excluding weekends or holidays. If a written request is timely filed, the affected party(ies) will be given an opportunity for a hearing at a convenient time in Tallahassee, Florida. The hearing will be limited to a review of the finding that the facts recited present an immediate threat to the public health, safety, and welfare sufficient to justify the entry of this Immediate Final Order. Failure to file a request for a hearing within five (5) days constitutes a waiver, and no hearing will be held.

You are hereby further notified that you have a right to request an advisory opinion or information letter as to your status and as to the effect of certain acts and transactions under the Retirement Income Security Act (ERISA) pursuant to ERISA Proc. 76-1, from the Pension and Welfare Benefits Administration of the United States Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, *Florida Statutes*, and Rule 9.110, *Fla.R.App.P.* Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida 32399-0333, and a copy of the same with the appropriate district court of appeal, within thirty (30) days of rendition of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Immediate Final Order has been faxed and sent by Certified Mail this 30 day of April, 2001 to, and shall forthwith be served upon:

N.A.P.T.
1500 Walnut St., Ste. 1030
Philadelphia, PA. 19102

N.A.P.T., through the
Treasurer of Florida
per Section 626.906, F.S.

David Weinstein
A.P.O. Box 4609
Cherry Hill, N.J. 08034

N.A.P.T.
803 E. Willow Grove Ave.
Wyndmoor, PA 19038

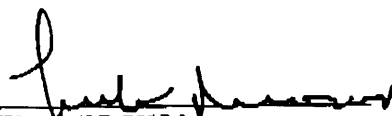
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2 Fieldstone Way
Moorestown, N.J. 08057

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Philadelphia, PA 19107

David Weinstein
1500 Walnut St., Ste. 1030
Philadelphia, PA. 19102

David Weinstein
803 E. Willow Grove Ave
Wyndmoor, PA 19038


LUKE S. BROWN
Senior Executive Attorney
Unauthorized Entities Supervisor
Florida Department of Insurance
200 East Gaines Street, 6th Floor
Tallahassee, Florida 32399-0333
Telephone: 850/413-4040
850/413-4118