

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of)
KANSAS RESIDENT INSURANCE) Docket No. EO-4165
AGENT LICENSE OF)
JOSEPH BENEDETTO)

SUMMARY ORDER

Pursuant to the authority granted to the Commissioner of Insurance (“Commissioner”) by K.S.A. §40-4909 *et seq.*, and in accordance with K.S.A. §77-537, the Commissioner hereby revokes the resident agent’s license of Respondent, **JOSEPH BENEDETTO** for violation of the applicable provisions of the Kansas Insurance statutes. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the fifteen (15) day period if no request for a hearing is made, pursuant to K.S.A. §77-542.

Findings of Fact

The Commissioner has been shown the following facts:

1. Kansas Insurance Department (hereinafter referred to “KID”) records indicate Respondent, 10618 Troy St., Commerce City, CO 80022, is licensed as a Kansas NonResident Insurance Agent and has been so licensed since October 14, 2009.
2. On March 24, 2010 KID’s consumer assistance division received a complaint from Kansas resident S.Z. She stated that she purchased a health plan through Consolidated Medical Services at phone number 888-312-3439. She stated that she was told that it would cost \$203.85 per month. A few days after she enrolled, a charge of \$428.80 was on her credit card.

3. On March 25, 2010 Jennifer Sourk, KID's consumer assistance representative, sent a letter of inquiry to Consolidated Medical Services regarding S.Z.'s complaint.
4. On April 12, 2010 Consolidated Medical Services, by and through its principal Joe Benedetto, explained that there was an enrollment fee that was charged to her credit card which created the difference in the amounts. Further Respondent explained that S.Z. purchased a limited benefit plan from the National Association of Business Leaders ("NABL") through his organization, Consolidated Medical Services. Respondent provided a mp3 audio which stated that part of the plan that S.Z. purchased was "insured benefits."
5. On May 5, 2010 Jennifer Sourk, KID's consumer assistance representative, sent a reply letter of inquiry requesting that Respondent provide more information regarding the product that S.Z. purchased and Respondent's relationship with NABL.
6. On June 4, 2010 KID received a follow-up response from Respondent explaining that his company did not sell a discount health plan but had sold benefits to a membership which included insured limited benefits. Respondent further stated that Consolidated Medical Services is a marketing company that was contracted to market association memberships for the NABL. Respondent explains that the agreement with the NABL allowed Consolidated Medical Services to contact clients that expressed an interest in the available benefits which included insured benefits.
7. Jennifer Sourk, KID staff attorney, sent a Nelson letter to NABL on May 20, 2010. NABL responded, by and through its attorney Thomas J. Force, on June 1, 2010. NABL acknowledges that the sale of insurance products to residents in Kansas was never authorized by the state of Kansas.

8. KID has determined that NABL unlawfully sold, solicited, negotiated and conducted the business insurance in the state of Kansas and has issued an Emergency Cease and Desist Order.

Applicable Law

9. K.S.A. 40-214 which states, in pertinent part:
It shall be unlawful for any person, company, corporation or fraternal benefit society to transact the business of insurance, indemnity or suretyship, or do any act toward transacting such business, unless such person, company, corporation or fraternal benefit society shall have been duly authorized under the laws of this state to transact such business and shall have received proper written authority from the commissioner of insurance in conformity with the provisions of the laws of this state relative to insurance, indemnity and suretyship, and further, it shall be unlawful for any insurance company to effect contracts of insurance in this state on the life or person of residents of this state or on property located in this state except through persons duly licensed and certified in accordance with the insurance laws of this state and subject to the provisions of K.S.A. 40-245 and amendments thereto.
10. K.S.A. 40-216, which states, in pertinent part:
(a) (1) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state.
11. K.S.A. 40-2404, which states, in pertinent parts:
The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
(1) Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:
(a) misrepresents the benefits, advantages, conditions or terms of any insurance policy.
(12) Any violation of any of the provisions of K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515 and amendments thereto.
12. K.S.A. 40-2702 which states, in pertinent part:
(a) As used in this act, unless the context otherwise requires, the term "insurer" means and includes all corporations, companies, associations, societies, fraternal benefit

societies, mutual nonprofit hospital service and nonprofit medical service companies, partnerships and persons engaged as principals in the business of insurance of the kinds enumerated in articles 4, 5, 6, 7, 11, 18, 19, 19a, 19b, 19c, 22, 32 and 38 of chapter 40 of the Kansas Statutes Annotated, and any amendments thereto, insofar as the business of insurance of the kinds enumerated in such articles relate to life and accident or sickness. Whenever in this section there is reference to an act effected or committed by mail, the venue of such act shall be at the point where the matter transmitted by mail is delivered and takes effect.

It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (b) of this section, without a certificate of authority from the commissioner of insurance.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state:

- (1) The making of or proposing to make, as an insurer, an insurance contract;
- (2) the taking or receiving of any application for insurance;
- (3) the receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;
- (4) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
- (5) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another 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 investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident in this state. Nothing herein shall be construed to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;
- (6) the transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance; or
- (7) the transacting of or proposing to transact any insurance business, in substance equivalent to any of the foregoing, in a manner designed to evade the provisions of this act.

Conclusions of Law

1. JOSEPH BENEDETTO's solicitation and sale of NABL insurance products, by and through his company Consolidated Medical Services, constitutes a violation of K.S.A. 40-214, K.S.A. 40-216, K.S.A. 40-2404(1)(a) and (12), and K.S.A. 40-2702.
2. Accordingly, the Commissioner concludes sufficient grounds exist for the revocation of the insurance agent's license of JOSEPH BENEDETTO pursuant to K.S.A. 40-4909(a) and (b).
3. The Commissioner finds, pursuant to K.S.A. 40-4909(b), that the insurable interests of the public are not properly served under JOSEPH BENEDETTO's license.
4. The Commissioner shall maintain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

The Kansas Resident Insurance Agent's License of JOSEPH BENEDETTO is hereby **REVOKED** effective the effective date of this Order.

IT IS FURTHER ORDERED that JOSEPH BENEDETTO shall **CEASE** and **DESIST** from the sale, solicitation or negotiation of insurance and/or receiving compensation deriving from the sale, solicitation or negotiation of insurance conducted after the effective date of this Order.

NOTICE OF RIGHTS

Joseph Benedetto is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas administrative Procedure Act. If Joseph Benedetto desires a hearing, the company must file a written request for a hearing with:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

This request must be filed within fifteen (15) days from the date of service of this Order. If Joseph Benedetto requests a hearing, the Kansas Insurance Department will notify the company of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event Joseph Benedetto files a petition for judicial review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

John W. Campbell, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

**IT IS SO ORDERED THIS 30TH DAY OF JUNE, 2010, IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ John W. Campbell
John W. Campbell
General Counsel

Certificate of Service

The undersigned hereby certifies that above and foregoing Summary Order was served via the United States Postal Service, first-class postage prepaid, on this 30th day of June, 2010, addressed to the following:

Joseph Benedetto
9090 S. Rigdeline Blvd., Suite 155
Highlands Ranch, CO 80129

/s/ Jennifer R. Sourk
Jennifer R. Sourk
Staff Attorney